

CHAPTER 16

TANZANIA





CHAPTER 16: TANZANIA

TANZANIA KEY INDICATORS
<p style="text-align: center;">2023 WORLD PRESS FREEDOM RANKING: 143rd globally; 45th out of 48 African countries (lowest ranking in SADC) “After the sudden death in March 2021 of President John Magufuli, who had become increasingly authoritarian and hostile towards the media, Samia Suluhu Hassan’s rise to power brought initial hopeful signs that have yet to come to fruition.”</p>
<p>MALABO CONVENTION: NOT signatory or party</p>
<p>BUDAPEST CONVENTION: NOT signatory or party</p>
<p>CONSTITUTIONAL PROTECTION FOR FREEDOM OF EXPRESSION: United Republic of Tanzania's 1977 Constitution, as amended through 2005</p> <p>The quoted provisions apply to the United Republic of Tanzania, including mainland Tanzania and Zanzibar. (See Article 29.) However, Zanzibar retains a degree of autonomy in its laws and government, and the Zanzibar Constitution 1984 similarly protects freedom of expression in Article 18, subject to limits set out in Article 24.</p> <p>18. FREEDOM OF EXPRESSION</p> <p>Every person –</p> <ol style="list-style-type: none"> 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. <p>30. LIMITATIONS UPON, AND ENFORCEMENT AND PRESERVATION OF BASIC RIGHTS, FREEDOMS AND DUTIES</p> <ol style="list-style-type: none"> 1. The human rights and freedoms, the principles of which are set out in this Constitution, shall not be exercised by a person in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest. 2. It is hereby declared that the provisions contained in this Part of this Constitution which set out the basic human rights, freedoms and duties, do not invalidate any existing legislation or prohibit the enactment of any legislation or the doing of any lawful act in accordance with such legislation for the purposes of – <ol style="list-style-type: none"> a. ensuring that the rights and freedoms of other people or of the interests of the public are not prejudiced by the wrongful exercise of the freedoms and rights of individuals;



- b. ensuring the defence, public safety, public order, public morality, public health, rural and urban development planning, the exploitation and utilization of minerals or the increase and development of property or any other interests for the purposes of enhancing the public benefit;
- c. ensuring the execution of a judgment or order of a court given or made in any civil or criminal matter;
- d. protecting the reputation, rights and freedoms of others or the privacy of persons involved in any court proceedings, prohibiting the disclosure of confidential information, or safeguarding the dignity, authority and independence of the courts;
- e. imposing restrictions, supervising and controlling the formation, management and activities of private societies and organizations in the country; or
- f. enabling any other thing to be done which promotes or preserves the national interest in general.

KEY LAWS:

- [The Cybercrimes Act 14 of 2015](#)
- [Media Services Act 12 of 2016](#), as amended in 2023¹
- [Electronic and Postal Communications \(Online Content\) Regulations, 2020](#), as amended by the [Electronic and Postal Communications \(Online Content\) \(Amendment\) Regulations, 2022](#)
- [The Penal Code \[Chapter 16\], Revised Edition 2022 \(selected provisions\) and Zanzibar Penal Act 6 of 2018 \(selected provisions\)](#)

CRIMINAL DEFAMATION: Yes, although the East African Court of Justice found the provisions on criminal defamation in the Media Services Act, 2016 to be an unjustifiable infringement of freedom of expression²

DATA PROTECTION: Tanzania has a data protection law.³

ACCESS TO INFORMATION: Tanzania has access to information law.⁴

16.1 CONTEXT

The **United Republic of Tanzania** consists of “**Mainland Tanzania**” and “**Tanzania Zanzibar**”;⁵ these are the official legal terms, although it is more common to refer simply “Mainland Tanzania” and “Zanzibar”. There are some different laws that regulate the media and impact freedom of expression in Mainland Tanzania and in the semi-autonomous area of Zanzibar, while some laws – including the Cybercrime

¹ See [The Written Laws \(Miscellaneous Amendments\) Act, 2023 \(published in bill form\); the final amendment Act could not be located online.](#)

² [Media Council of Tanzania & 2 Others v Attorney General of the United Republic of Tanzania](#), East African Court of Justice, Case No 2 of 2017, 28 March 2019. Some amendments to the Act in question were made in 2023 but they did not remove criminal defamation.

³ [The Personal Data Protection Act 11 of 2022.](#)

⁴ [The Access to Information Act 6 of 2016.](#)

⁵ [United Republic of Tanzania's 1977 Constitution, as amended through 2005](#), Article 2(1).



Act,⁶ the Tanzania Communications Regulatory Authority Act⁷ the Electronic and Postal Communications Act⁸ and the Tanzania Telecommunications Corporation Act 12 of 2017⁹ - apply throughout the United Republic of Tanzania.

The **Tanzania Communications Regulatory Authority Act, 2003** creates the **Tanzania Communications Regulatory Authority (TCRA)**, which is an amalgamated body that brings together the former Tanzania Communications Commission and the former Tanzania Broadcasting Commission. The TCRA is charged, amongst other things, with issuing licences and setting standards for the “regulated sector”, which includes telecommunications, radio and television broadcasting, postal services, and electronic technologies including the internet and other ICT applications. It also monitors the performance of the regulated sectors and facilitates the resolution of disputes and complaints.¹⁰ The President appoints the Chairman and Vice-Chairman of the Board, while the relevant minister appoints the other Board members and the Director-General. However, all appointments must be from amongst candidates short-listed by a Nomination Committee made up of government and private sector representatives.¹¹ Interestingly, the TCRA is required to conduct an annual consultation process with stakeholders (identified by the TCRA) for the purpose of effectively carrying out its functions.¹² It is also required to maintain a Public Register of key decisions and information that is open to public inspection.¹³ Amongst the subsidiary bodies set up under the law is a “Content Committee” appointed by the minister to advise the Sector Minister on broadcasting policy and to monitor and regulate broadcast content,¹⁴ and a “Consumer Council” to consult with industry, government and other consumer groups and to represent consumer interests.¹⁵

The **Tanzania Communications Regulatory Authority Act, 2003** establishes the **Tanzania Broadcasting Services** (TBC or TUT, based on its Kiswahili name) as a state broadcaster. The President appoints the Chairperson and the Director-General of the TBC, while the relevant minister appoints the other board members.¹⁶

Another key piece of legislation is the **Electronic and Postal Communications Act (Revised Edition 2022)**, which is aimed at providing a comprehensive regulatory regime for electronic communications service providers under the TCRA. It provides

⁶ [The Cybercrimes Act 14 of 2015](#), section 2: “Save for section 50 [on the compounding of offences], this Act shall apply to Mainland Tanzania as well as Tanzania Zanzibar.”

⁷ [The Tanzania Communications Regulatory Authority Act 12 of 2003](#), section 2(3)-(4). The Act does not apply to Tanzania Zanzibar with respect to broadcasting and content matters.

⁸ [The Electronic and Postal Communications Act \[Chapter 306 R.E. 2022\]](#), section 2 (with an exception for the activities that fall within the jurisdiction of the Zanzibar Broadcasting Commission under the Zanzibar Broadcasting Commission Act 7 of 1997). The initial Electronic and Communications Act was Act 3 of 2010, but it has been amended several times since it was passed.

⁹ [The Tanzania Telecommunications Corporation Act 12 of 2017](#), section 2.

¹⁰ [The Tanzania Communications Regulatory Authority Act 12 of 2003](#) as amended by [The Electronic and Postal Communications Act, 2010](#) (amending sections 3, 15, 21, 26-27, 33-35, 41-42, 45, 47-48, 51 and the Schedule), Part II read with the definition of “regulated sector” in section 3.

¹¹ *Id.*, section 13.

¹² *Id.*, section 22.

¹³ *Id.*, section 23.

¹⁴ *Id.*, Part IV.

¹⁵ *Id.*, Part VII.

¹⁶ Further details regarding the TBC are set out in the Public Corporation (The Tanzania Broadcasting Services) (Establishment) Order, 2002, G.N. No. 239 of 2002 (not located online). See Justine Limpitlaw, [Media Law Handbook for Southern Africa – Volume 3](#), “Chapter 14: Tanzania”, Konrad Adenauer Stiftung, 2021, pages 37-39. The TBC is established under section 4 of the Public Corporation Act.



for the licensing of different categories of “content services” and provides for the imposition of a range of content restrictions – which are discussed in detail below.¹⁷

The **Tanzania Telecommunications Corporation Act, 2017** sets up a public telecommunications corporation aimed at enhancing the safety, security, economic and commercial viability of national telecommunications services and telecommunications infrastructure.¹⁸

The **Media Council of Tanzania** is a self-regulatory body established in 1995 which operates in respect of both Tanzania and Zanzibar. It has developed a Code of Ethics for Media Professionals and a Professional Code for Journalists.¹⁹ MISA-Tanzania recommends that this body “should take more initiative in tackling the problem of declining professional standards and ethics among Tanzanian journalists without depending on government support.”²⁰

A) TANZANIA

The **Media Services Act, 2016**, which applies only to Mainland Tanzania,²¹ provides for the licensing of print media and the accreditation of journalists through a Journalists Accreditation Board. It also contains provisions on the rights and obligations of media houses (which include print media, radio and television broadcasters and online content providers). The Act gives the relevant minister broad powers to ban or suspend publications on national security or public safety grounds,²² and this power has been applied in practice against various media outlets.²³ The Act also contains a chapter on criminal defamation,²⁴ and a number of other offences concerning content that could inhibit freedom of expression (discussed in more detail below).²⁵ It also sets up an **Independent Media Council** which is tasked to adopt a Code of Ethics for professional journalists, review the performance of the media sector, promote media accountability and handle complaints relating to print media only. All accredited journalists are members of the Council, which elects its own leadership. The Council is expected to adhere to “national unity, national security, sovereignty, integrity and public moral” in carrying out its functions.

In March 2019, the **East African Court of Justice** directed Tanzania to amend the Media Services Act after finding a number of its provisions - including those on sedition, criminal defamation, and the publication of false news - to be contrary to the Treaty

¹⁷ [The Electronic and Postal Communications Act \[Chapter 306 R.E. 2022\]](#). Note that section 167A of this law repeals the Broadcasting Services Act 6 of 1993 and the Tanzania Communications Act 18 of 1993. See Justine Limpitlaw, [Media Law Handbook for Southern Africa – Volume 3](#), “Chapter 14: Tanzania”, Konrad Adenauer Stiftung, 2021, pages 30-ff.

¹⁸ [The Tanzania Telecommunications Corporation Act 12 of 2017](#).

¹⁹ Justine Limpitlaw, [Media Law Handbook for Southern Africa – Volume 3](#), “Chapter 14: Tanzania”, Konrad Adenauer Stiftung, 2021, pages 68-ff and 122. The Media Council of Tanzania recently produced an analysis of the Electronic and Postal Communications (Online Content) Regulations 2020 which is discussed below.

²⁰ “Tanzania Media Trends Analysis Report, 2021”, The Media Institute of Southern Africa, Tanzania Chapter (MISA-Tanzania), 2021, page 31.

²¹ [Media Services Act 12 of 2016](#), section 2.

²² *Id.*, section 59.

²³ [“Tanzania: Victory for media freedom as ban on four newspapers lifted”](#), Amnesty International, 11 February 2022.

²⁴ [Media Services Act 12 of 2016](#), Part V.

²⁵ *Id.*, Part VII.



for the Establishment of the East African Community and the right to freedom of expression. The offending sections were as follows:

- Sections 7(3)(a), (b), (c), (f), (g), (h), (i) and (j): Section 7(3) of the Act requires media houses to make sure that the information they issue complies with a list of requirements – such as ensuring that information does not undermine national security or lawful investigation; “constitute hate speech”; “involve an unwarranted invasion of an individual’s privacy” or cause substantial harm to the Government’s ability to manage the economy. The Court found that eight of the ten categories of content restrictions were invalid under Tanzania’s international obligations regarding freedom of expression because they did not adequately define what was prohibited by the legislation and had not been shown to be a proportionate response to a legitimate aim.
- Section 19-21: These sections concerning the accreditation of journalists were also held to be invalid restrictions on freedom of expression. Although the accreditation of journalists is not necessarily objectionable, the scheme in the Media Service Act relies on a definition of “journalist” that is too difficult to define with precision and was not tied to a legitimate state aim.
- Sections 35-40: Section 35 deals with criminal defamation, as detailed in the following sections. The Court the use of criminal sanctions had a chilling effect on journalists’ freedom of expression and was thus a disproportionate limitation on freedom of expression.
- Section 50(1)(c)(i): This provision makes it an offence to use a media service to publish any statement that threatens “the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health”. The Court held that this restriction was too broad and imprecise to pass muster.
- Section 54: This restriction on publishing any false statement, rumour or report “likely to cause fear or alarm to the public or to disturb the public peace” was also found to be too vague to enable individuals to regular their conduct accordingly.
- Sections 52-53: These provisions concern seditious speech or publications, described as those which inspire hatred, contempt or disaffection against government or the administration of justice, incite people to attempt to use unlawful means to alter any matter, raise discontent or disaffection between people or groups. or promote ill-will and hostility between different categories of the population. It is permissible to use speech or a publication to show that the Government has been misled or mistaken in any of its measures; or to point out errors or defects in government, in legislation or in the administration of justice with a view to remedying such errors or defects. The Court found that these provisions also failed the test of clarity and certainty.
- Sections 58-59: Section 58 allows the relevant minister to prohibit the import of any publication the minister considers to be “contrary to the public interest”, while section 59 allows the minister to “prohibit or otherwise sanction the publication of any content that jeopardises national security or public safety”. The Court found these powers too far-reaching and subjective to be a



proportional limitation on freedom of expression.²⁶

In August 2021, three Tanzanian human rights organizations filed a lawsuit against the government at the **East African Court of Justice** in respect of the government's failure to amend the Media Services Act in the wake of the 2019 ruling.²⁷ In 2023, Parliament passed some amendments to the Media Services Act, but these failed to address all of the issues identified by the East African Court of Justice.²⁸ The provisions on criminal defamation and some other problematic content-based offences will be discussed below.

The **Films and Stage Plays Act, 1976**, governs, among other things, making and exhibiting films in Tanzania, both of which require permits from the relevant minister. The film permit application must include a full description of the scenes and the full script of the entire film. In terms of the **Films and Stage Plays Regulations, 2020** issued under this Act, the definition of a film is "the arrangement of images of objects recorded and linked to the sounds of words or music and stored in the device in a digital format, or in any format that the image can be moved and includes any images in the form of various film or video but does not include video developed in the context of journalism". The law empowers the minister to order that a public officer must be present at the making of the film, with authority to stop the filming of any scene which, in the opinion of the officer, is objectionable. Amendments to the law in 2019 require foreign content producers to submit all raw footage, information about where it was shot, and a final copy of the production to the Tanzania Film Board, and to sign a prescribed clearance form before leaving Tanzania.²⁹ Amnesty International described this as a "dangerous step deeper into censorship",³⁰ while one law firm said that the 2019 amendments will mean that "the film and stage plays industry will be coming under increasingly close scrutiny and regulatory oversight".³¹

A number of local songs have been banned by the National Arts Council of Tanzania (known as *Baraza la Sanaa Tanzania* (BASATA) in Kiswahili) under the **National Arts Council Act 23 of 1984**, for being deemed to be against the country's norms and values, in violation of broadcasting services content regulations or unsuitable for public consumption.

²⁶ [Media Council of Tanzania & 2 Others v Attorney General of the United Republic of Tanzania](#), East African Court of Justice, Case No 2 of 2017, 28 March 2019; see the case summary by Global Freedom of Expression [here](#).

²⁷ ["Tanzania ruling party newspaper Uhuru returns after two-week suspension"](#), Committee to Protect Journalists, 10 September 2021.

²⁸ See [The Written Laws \(Miscellaneous Amendments\) Act, 2023](#), published as a bill in January 2023; the version of the bill that was actually passed by Parliament could not be located online. See also ["What media law changes mean"](#), *The Citizen*, 14 June 2023. According to one source: "After a tireless discussion with the state actors, the Coalition on the Right to Information (CoRI) proposed about 35 changes desired in the Media Services Act of 2016 to increase media freedoms and individual freedoms. However, the amendment Bill that the Attorney General of the Government submitted to the parliament in 2023 has proposed changes to eight sections, leaving critical sections such as the ones that criminalise defamation." Francis Nyonzo, ["Tanzania's Media Services Act: A Manifestation of the Man With the Hammer Syndrome?"](#), The Chanzo Initiative, 27 March 2023.

²⁹ [The Films and Stage Plays Act 14 of 1976](#), as amended by the [Local Government \(District Authorities\) Act 7 of 1982](#) (which amends section 9) and the [Written Laws \(Miscellaneous Amendments\) \(No 3\) Act, 2019](#); see also ["Corporate Commercial Law Update: The Tanzania Film Regulations of 2020; Implications to Businesses as far as Video Ads and Digital Content Regulation is Concerned in Tanzania"](#), Breakthrough Attorneys, 21 March 2021.

³⁰ ["Tanzania: Discard new law restricting human rights"](#), Amnesty International. 28 June 2019.

³¹ Francis Kamuzora, "Amendments to Copyright and Film Laws set the Scene for Change", *Bowman's*. 14 August 2019.



The power to take such steps is not set out explicitly in the law but has been exercised under a provision of the law that gives BASATA discretionary power to do all such acts as appear to it to be requisite, advantageous or convenient in connection with the exercise of its functions.³²

B) ZANZIBAR

Note that the information in this subsection comes from secondary sources as the legislation discussed here could not be located online.

The **Registration of Newsagents, Newspapers and Books Act 5 of 1988** requires the registration of all newspapers in Zanzibar, with “newspaper” being defined as “any printed matter containing news, or intelligence, or reports of occurrences of interest to the public or any section thereof, or any views, comments or observations thereon, printed for sale or distribution and published in Tanzania periodically or in parts or numbers”. This Act empowers the relevant minister to suspend the publication of a newspaper if this is in the public interest, in the minister’s opinion. This law also prohibits any person who does not hold a written authorisation issued by the Director of Information Services from collecting or distributing any news or news material in Zanzibar. The registration of a journalist under this law can be suspended or revoked in the public interest.³³

In 2016, the **East African Court of Justice** considered the suspension of *Mseto*, a weekly Tanzanian newspaper, under the previous law on the registration of newspapers, the Newspaper Act, 1979. The newspaper was ordered to cease publication, including any electronic communication, for three years after it carried an article alleging that a government official had taken bribes to raise funds for the election campaign of President John Magufuli. The Court found that the suspension order violated the right to freedom of expression in Article 18(1) of the Constitution of Tanzania, Article 19(3) of the International Covenant on Civil and Political Rights and Article 27(2) of the African Charter on Human and People’s Rights. It found that the Minister had acted unlawfully by issuing orders restricting the freedom of expression based merely on subjective opinion.³⁴

The **Zanzibar Arts and Censorship Council Act 7 of 2015** regulates the making of films in Zanzibar. It establishes the Zanzibar Arts and Censorship Council (BASSFU), appointed by the relevant minister with the duty (amongst other things) to preserve, maintain and promote the values and norms of Zanzibar culture, to ensure that all films are censored before they are presented to the public and to “suspend any cinematographic exhibition, stage play and any other entertainment which is inconsistent with the righteous conduct of Zanzibar”. No films may be exhibited or

³² Leonard Chimanda, “[Law and Censorship of Artistic Works in Tanzania: The Case of BASATA](#)”, Sanaa: Journal of African Arts, Media and Cultures, 3(1), 2018, pages 13-26. The underlying law, which could not be located online, was amended by the [Written Laws \(Miscellaneous Amendments\) \(No. 5\) Act 2019](#).

³³ Justine Limpitlaw, [Media Law Handbook for Southern Africa – Volume 3](#), “Chapter 14: Tanzania”, Konrad Adenauer Stiftung, 2021, pages 97-101.

³⁴ [Mseto v Attorney General](#), East African Court of Justice, Case No 7 of 2016, 21 June 2018; see the case summary by Global Freedom of Expression [here](#).



distributed without a permit.³⁵

Broadcasting in Zanzibar is regulated by the **Zanzibar Broadcasting Commission Act 7 of 1997**, which establishes a Zanzibar Broadcasting Commission made up of two members appointed by the President and additional members appointed by the relevant minister. The Commission issues broadcasting licences, regulates various broadcasting activities and protects “the policy, security, culture and tradition of Zanzibar”. In addition to having a duty to present news and current affairs in an impartial and balanced manner, broadcasting licences must contribute to shared national consciousness, identity and continuity.³⁶

The Zanzibar Broadcasting Corporation (ZBC) is established as Zanzibar’s national broadcaster by the **Zanzibar Broadcasting Corporation Act, 2013**, and operates under the direction of a Board with a chairperson appointed by the President and members appointed by the relevant minister.³⁷

16.2 CONSTITUTION

Article 18 of the **Constitution of the United Republic of Tanzania**, which applies to both Mainland Tanzania and Zanzibar, provides for freedom of speech but does not explicitly provide for freedom of expression for members of the press and other media.³⁸

The general limitations clause in Article 30 (quoted on the first page of this chapter) is problematic because it provides very wide grounds for limiting basic rights – including promoting the national interest and controlling the activities of private societies and organizations. There is no explicit requirement that limitations on rights must be proportional, justifiable, reasonable or the least restrictive means of achieving the aim in question.³⁹

It should be noted that as of mid-2023, a review process was underway that could lead to constitutional reforms.⁴⁰

Article 18 of the **1984 Zanzibar Constitution** also protects freedom of expression:

³⁵ Justine Limpitlaw, *Media Law Handbook for Southern Africa – Volume 3*, “Chapter 14: Tanzania”, Konrad Adenauer Stiftung, 2021, pages 101-102. The Bill is available [here](#).

³⁶ *Id.*, pages 102-110,113.

³⁷ *Id.*, pages 110-113.

³⁸ Article 18 is quoted in the table on the first page of this chapter.

³⁹ Justine Limpitlaw, *Media Law Handbook for Southern Africa – Volume 3*, “Chapter 14: Tanzania”, Konrad Adenauer Stiftung, 2021, page 7.

⁴⁰ “[The constitutional reform as a reason for optimism about the future of democracy in Tanzania](#)”, Robert Lansing Institute, 17 May 2023. According to this article, President Samia Suluhu Hassan appointed a task team in 2022 to review the political situation in the country, and this task team a revival of the constitution-writing process that had stalled in 2014-2015. A round of public consultations held by the task team on this issue was concluded in September 2022.



18. (1) Without prejudice to the relevant laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers and also has the right of freedom from interference with his communications.
- (2) Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society. ⁴¹

In terms of Article 24, these rights can be limited by law if that limitation is “necessary and agreeable in the democratic system”. The “foundation” of the right in question may not be limited, and the limitations may not bring about more harm to society than is already present.⁴² Again, these are broad criteria for the limitation of rights, with no explicit requirements that the limitations must be proportional, justifiable, reasonable or the least restrictive means of achieving the aim in question.⁴³

No seminal court cases applying the constitutional rights to freedom of expression were located.

16.3 CASE STUDIES

Tanzania experienced a sharp decline in press freedom during the rule of late president John Magufuli, who died in March 2021. There were hopes for change under the succeeding rule of Samia Suluhu Hassan, the country’s first female president.⁴⁴ In June 2022, the Committee to Protect Journalists reported that there were indications that the new government was taking a friendlier stance towards the press, with newspaper and online television bans having been lifted and reviews of problematic laws announced. However, at the same time, this group noted that the “old habits of media shutdowns and arbitrary arrests have not been fully abandoned” and worried that the new administration has not yet fully embraced “a vision of press freedom in which journalists can independently report, including on uncomfortable topics or from a dissenting position”.⁴⁵

In 2022, the US State Department reported significant human rights concerns that included credible reports of “serious restrictions on free expression and media, including unjustified arrests or prosecutions of journalists, censorship, and enforcement of criminal libel laws” and “serious restrictions on internet freedom”. Its report noted that the rights of free expression were limited through both formal legislative and regulatory measures and informal actions by government and police.

⁴¹ [The Constitution of Zanzibar, 1984 \[Revised Edition 2006\]](#), Article 18.

⁴² *Id.*, Article 24.

⁴³ Justine Limpitlaw, [Media Law Handbook for Southern Africa – Volume 3](#), “Chapter 14: Tanzania”, Konrad Adenauer Stiftung, 2021, page 82.

⁴⁴ Fumbuka Ng’wanakilala, “Optimism in the Media Industry after a Dark Period”, [The State of Press Freedom in Southern Africa 2020-2021](#), Media Institute of Southern Africa, page 49.

⁴⁵ “[CPJ returns to Tanzania](#)”, *CPJ Insider: June 2022 edition*, 2 June 2022.



The report cited as particular problems laws that give the government the authority to shut down media outlets and the use of criminal penalties for libel to stifle freedom of expression.⁴⁶

In some positive news in 2022, it was reported that a five-year suspension of the newspaper *Mawio* was lifted. The newspaper had been suspended in 2017 for “jeopardizing national security” by reporting on two former presidents’ alleged links to mining misconduct. The licences of newspapers *MwanaHALISI*, *Mseto* and *Tanzania Daima* were also restored in 2022, after they had been banned or suspended from publishing online and in print under former President Magufuli.⁴⁷

More problematically, in February 2022, police and wildlife officers detained six journalists (from *Mwananchi Digital*, *Nipashe*, *Wasafi TV*, *Daily News Digital*, and *Start TVI*) in the Ngorongoro Conservation Area who were covering a village meeting regarding the ongoing land dispute between pastoralist residents and law enforcement officials. They were allegedly arrested for **failing to follow proper media procedures** but were released from custody a few hours later.⁴⁸

In January 2022, police **arrested** journalists in Loliondo for attempting to cover an ongoing land dispute between Maasai pastoralists and authorities. In June 2022, when tensions re-emerged in the area, independent media did not report on the situation due to fear of government reprisals. Journalists were also regularly prohibited from accessing the area for media coverage. In July 2022, the TCRA **temporarily suspended the online media outlet DarMpya**, following complaints about content relating to demonstrations on the same issue outside of the Kenyan Embassy in Dar es Salaam, and Kenyan journalist Julius Kuyioni was **arrested on a charge of illegal entry into Tanzania**, apparently also as part of authorities’ attempts to stop journalists covering the community protests in Loliondo.⁴⁹

In September 2022, the TCRA Content Committee fined *Zama Mpya TV* (a rebranding of *DarMpya* after its previous difficulties) for allegedly publishing inflammatory and unsubstantiated content regarding the government’s introduction of fees on electronic banking. The Committee accused the media outlet of **endangering the peace, unity, and safety of the country** and placed it under TCRA supervision and monitoring for three months.⁵⁰

In June 2022, during an interview with a local media outlet, politician Baraka Shamte made comments critical of Zanzibar President Hussein Mwinyi, suggesting he was not a good leader and did not deserve a second term. Shamte was arrested on a charge of **sedition** for allegedly making statements demeaning to government officials. He was released on bail but kidnapped and beaten by unknown assailants the next day.⁵¹

⁴⁶ “[2022 Country Reports on Human Rights Practices: Tanzania](#)”, US State Department, “Executive Summary” and section 2A.

⁴⁷ Muthoki Mumo, “[A rush of relief: Tanzanian investigative newspaper allowed to publish after 5-year ban](#)”. Committee to Protect Journalists, 21 March 2022.

⁴⁸ “[2022 Country Reports on Human Rights Practices: Tanzania](#)”, US State Department, section 2A.

⁴⁹ “[2022 Country Reports on Human Rights Practices: Tanzania](#)”, US State Department, section 2A; “[East and Southern Africa: Attacks on journalists on the rise as authorities seek to suppress press freedom](#)”, Amnesty International, 3 May 2023; “[Tanzanian regulator suspends DarMpya online news outlet, citing expired license](#)”, Committee to Protect Journalists, 12 July 2022.

⁵⁰ “[2022 Country Reports on Human Rights Practices: Tanzania](#)”, US State Department, section 2A.

⁵¹ *Id.*



In August 2021, Tanzania's Information Services Department suspended the ruling party-owned *Uhuru Newspaper* for 14 days in response to allegations that it had published a false and seditious report about President Samia Suluhu Hassan. The report in question stated that she did not intend to run for office in the next general election in 2025. The suspension was based on **sections 50(1)(a),(b),(d) and 52(d) of the Media Services Act, 2016 concerning publication of false, falsified or fabricated information raising discontent or disaffection amongst the people of Tanzania**. The ruling party distanced itself from the article, saying that it was false and that three senior managers at *Uhuru* had been suspended pending an investigation.⁵²

In September 2021, Tanzania's Information Services Department suspended publication of the *Raia Mwema* newspaper for a month, citing several articles they had published relating to government figures or policies. The **suspension was made under section 52 of the Media Services Act, 2018 relating to seditious intent, along with section 54 relating to the publication of false statements or rumours likely to cause public disturbance**.⁵³

Also in September 2021, cartoonist Opptertus John Fwema, was **arrested** days after publishing on his Instagram page a political cartoon that was critical of President Samia Suluhu Hassan. Police apparently stated that Fwema was under investigation for **cybercrime offences**.⁵⁴

In July 2021, journalist Ephraim Bahemu of *The Citizen* newspaper was **arrested and questioned** by police in Dar es Salaam **under the authority of the Cybercrimes Act 4 of 2015** in connection with an article on new mobile phone levies introduced by the government.⁵⁵

In September 2021, independent cartoonist Opptertus John Fwema was arrested by police in Dar es Salaam because of a political cartoon that he posted on Instagram.⁵⁶

Between January and April 2020, at least 13 media workers, including seven journalists and bloggers, were arrested and prosecuted for allegedly contravening the **Electronic and Postal Communications (Online Content) Regulations, 2018**. It was reported that the charges included failure to register websites and YouTube channels at the TCRA.⁵⁷

In April 2020, the *Mwananchi* newspaper was banned from publishing online for six months and fined five million Tanzanian shillings after it circulated an online video showing then-President John Magufuli buying fish in an open market during the Covid-19 pandemic. The newspaper was charged with **publication of false news in violation**

⁵² "LEXOTA Country Analysis: Tanzania", last updated December 2022; "[Tanzania ruling party newspaper Uhuru returns after two-week suspension](#)", Committee to Protect Journalists, 10 September 2021.

⁵³ "LEXOTA Country Analysis: Tanzania", last updated December 2022; "[Tanzanian authorities suspend Raia Mwema newspaper for 1 month](#)", Committee to Protect Journalists, 15 September 2021.

⁵⁴ "[Tanzania police arrest cartoonist, journalists on cybercrime and illegal assembly allegations](#)", Committee to Protect Journalists, 7 October 2021.

⁵⁵ "Tanzania Media Trends Analysis Report, 2021", The Media Institute of Southern Africa, Tanzania Chapter (MISA-Tanzania), 2021, page 10.

⁵⁶ *Id.*, pages 10-11.

⁵⁷ Fumbuka Ng'wanakilala, "Optimism in the Media Industry after a Dark Period", [The State of Press Freedom in Southern Africa 2020-2021](#), Media Institute of Southern Africa, page 48.



of regulation 12(I) of the **Electronic and Postal Communications (Online Content) Regulations, 2018**. These regulations have since been replaced by the **Electronic and Postal Communications (Online Content) Regulations, 2020**, which contain a similar prohibition against “prohibited content” in regulation 16.⁵⁸

In June 2020, the government **revoked the licence** of the Swahili daily tabloid, *Tanzania Daima*, citing alleged repeated violations of national laws and journalism ethics.⁵⁹

In July 2020, the TCRA **suspended the licence** of *Kwanza Online TV* for 11 months for **generating and disseminating biased, misleading and disruptive content in violation of regulation 12(1) of the Electronic and Postal Communications (Online Content) Regulations, 2018** (now replaced by regulation 16 of the **Electronic and Postal Communications (Online Content) Regulations, 2020**). This action was a response to the news outlet’s sharing on Instagram of a US embassy health alert about the government’s failure to publish any Covid-19 figures, which TCRA claimed to be aimed at causing panic and damaging the national economy. This suspension followed on a previous six-month suspension of *Kwanza Online TV*’s operations in September 2019, also for allegedly publishing misleading information.⁶⁰

Tanzanian comedian, Idris Sultan was arrested twice during the reign of the late President John Magufuli. He was first arrested in October 2019 and charged with **impersonating the president** for posting what was been described as “a face-swap picture” of Magufuli on Twitter. He was arrested again in May 2020, after he posted a video of himself laughing at a picture of Magufuli in an oversized suit. On that occasion, he was charged with **using a SIM card that was not registered in his name**.⁶¹

In 2019, an investigative journalist at *Watetezi TV*, Joseph Gandye, was arrested for **disseminating false information in violation of section 16 of the Cybercrimes Act, 2015**. The journalist had reported on police brutality against young people in police custody and alleged that police officers had forced six young people in custody to “sodomize each other”. He was reportedly released several days later, and it was unclear whether charges were being pressed.⁶²

Also in 2019, Sebastian Atilio was arrested for allegedly spreading false news on a WhatsApp group known for commentary on politics and social issues. The information he published related to a claim that villagers in the Iringa region were potentially facing eviction and relocation to make way for the Unilever Tea Tanzania Company Limited. Atilio was charged with **publishing false information contrary to section 16 of the Cyber Crimes Act, 2015**, and for **performing journalist activities without a permit from the Tanzania Journalists Board contrary to section 50(2)(b) of the Media Services Act, 2016**. He was held for nearly three weeks before being released on bail. The charges were withdrawn about five months after the arrest.⁶³

⁵⁸ “[LEXOTA Country Analysis: Tanzania](#)”, last updated December 2022.

⁵⁹ Fumbuka Ng’wanakilala, “Optimism in the Media Industry after a Dark Period”, [The State of Press Freedom in Southern Africa 2020-2021](#), Media Institute of Southern Africa, page 48.

⁶⁰ “[LEXOTA Country Analysis: Tanzania](#)”, last updated December 2022.

⁶¹ [The State of Press Freedom in Southern Africa 2020-2021](#), Media Institute of Southern Africa, page Misa state of press freedom 2020-2020, page 9.

⁶² “[LEXOTA Country Analysis: Tanzania](#)”, last updated December 2022.

⁶³ Id.



There are reports that government has restricted **access to the internet** and **monitored websites and internet traffic**.⁶⁴

16.4 CYBERCRIME LEGISLATION AND OTHER LEGAL PROVISIONS RELEVANT TO FREEDOM OF EXPRESSION

A) CYBERCRIMES ACT, 2015

Tanzania's **Cybercrimes Act, 2015** has been described as a close copy of the SADC Model Law, including aspects of that law which have been criticised as being problematic.⁶⁵ Tanzania's law was met with sharp criticism from stakeholders who worried that it would be applied by government to muzzle the right to online freedom of expression. Indeed, it has been applied repeatedly against social media users and bloggers who have expressed criticism of government figures.⁶⁶ One analysis commented: "Ever since it was passed, the Act has been (ab)used by the government to arrest citizens that used online media to express criticism of President Magufuli. In this regard, the Cybercrime Act is perceived more as a tool to oppress the freedom of expression and the closely related right to privacy".⁶⁷ Another commented that the "overall heavy-handedness of the law has led to it being described as an 'anathema to democracy and free speech'".⁶⁸

For every offence in the Act, both technical and content-based, the Act provides **minimum** fines and prison sentences. This is particularly worrying in respect of some of the vaguely defined offences.

There are also enhanced minimum penalties when an offence under the Cybercrimes Act or any other written law is committed in relation to **critical information infrastructure** – which includes "assets, devices, computer system, or networks, whether physical or virtual so vital to the United Republic of Tanzania that their incapacitation affect national security or the economy and social wellbeing of citizens". The relevant minister "may" designate a computer system as a "critical information infrastructure" by notice in the *Gazette*.⁶⁹ In the absence of such a notice, it could be difficult for persons affected by the laws to know when the enhanced penalties would apply.

⁶⁴ "[2022 Country Reports on Human Rights Practices: Tanzania](#)", US State Department, section 2A.

⁶⁵ "[An Analysis of the Southern African Development Community Cybersecurity Legal Framework: A Human Rights Based Approach](#)", American Bar Association, Rule of Law Initiative & American Bar Association, Center for Human Rights, November 2020, page 33.

⁶⁶ "[Freedom of expression in Tanzania is on a downward spiral](#)", Global Voices, 6 December 2022; "[Cybersecurity and Cybercrime Laws in the SADC Region: Implications on Human Rights](#)", MISA-Zimbabwe/Konrad Adenauer Stiftung, [2021], page 30.

⁶⁷ "[Cybersecurity and Cybercrime Laws in the SADC Region: Implications on Human Rights](#)", MISA-Zimbabwe/Konrad Adenauer Stiftung, [2021], page 29.

⁶⁸ "[An Analysis of the Southern African Development Community Cybersecurity Legal Framework: A Human Rights Based Approach](#)", American Bar Association, Rule of Law Initiative & American Bar Association, Center for Human Rights, November 2020, page 33.

⁶⁹ [The Cybercrimes Act 14 of 2015](#), sections 28-29.



The law also provides for the forfeiture of property associated with an offence, and for the payment of compensation to the victim of the offence by the convicted offender.⁷⁰

CYBERCRIMES ACT, 2015 - TECHNICAL OFFENCES	
Section 4: Illegal access	<p>It is an offence to intentionally and unlawfully access a computer system or cause a computer system to be accessed.</p> <ul style="list-style-type: none"> ○ "Access" in relation to a computer system is defined in section 3 as "entry to, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any of the resources of the computer system or network or data storage medium". This wording is somewhat ambiguous as to whether it criminalises entry on its own, or only entry to do one of the other listed acts (instruct, communicate with, store data, etc). This should be clarified.⁷¹
Section 5: Illegal remaining	<p>It is an offence to intentionally and unlawfully, remain in a computer system or continue to use a computer system after the expiration of time which was authorised.</p> <ul style="list-style-type: none"> ○ It has been asserted that "illegal-remaining" offences are unnecessary because they are covered by the offence of unauthorised access.⁷²
Section 6: illegal interception	<p>It is an offence to intentionally and unlawfully intercept by technical or any other means a non-public transmission to, from or within a computer system, a non-public electromagnetic emission from a computer system or a non-public computer system that is connected to another computer system.</p> <p>It is also an offence to intentionally and unlawfully circumvent the protection measures implemented to prevent access to the content of non-public transmission.</p> <ul style="list-style-type: none"> ○ Section 3 defines "interception" in relation to a function of a computer to include "acquiring, viewing, listening or recording any computer data communication through any other means of electronic or other means, during transmission through the use of any technical device". ○ This offence "captures the essence of interception as envisioned in the Budapest Convention".⁷³ ○ One commentator points out it was unnecessary to refer to interception of a non-public computer system that is connected to another computer system, as this was already covered by the types of interception listed.⁷⁴

⁷⁰ Id, section 48.

⁷¹ One commentator reads it in the broad sense as criminalising initial entering of a computer system, as well as conduct done after access is gained. Lewis C Bande, "[Legislating against Cyber Crime in Southern African Development Community: Balancing International Standards with Country-Specific Specificities](#)", *International Journal of Cyber Criminology*, Vol 12 Issue 1, Jan-June 2018, page 14.

⁷² [Assessing Cybercrime Laws from a Human Rights Perspective](#), Global Partners Digital, [2022], page 14.

⁷³ Lewis C Bande, "[Legislating against Cyber Crime in Southern African Development Community: Balancing International Standards with Country-Specific Specificities](#)", *International Journal of Cyber Criminology*, Vol 12 Issue 1, Jan-June 2018, page 16.

⁷⁴ Id.



<p>Section 7: Illegal data interference</p>	<p>It is an offence to intentionally and unlawfully -</p> <ul style="list-style-type: none"> • damage or deteriorate computer data; • delete computer data; • alter computer data; • render computer data meaningless, useless or ineffective; • obstruct, interrupt or interfere with the lawful use of computer data; • obstruct, interrupt or interfere with any person in the lawful use of computer data; or • deny access to computer data to any person authorized to access it. <p>It is an offence to communicate, disclose or transmit any computer data, program, access code or command to an unauthorized person, or to internationally and unlawfully receive unauthorised computer data.</p> <p>It is an offence to intentionally and unlawfully destroy or alter any computer data, where such data is required to be maintained by law or is evidence in any proceeding under this Act by -</p> <ul style="list-style-type: none"> • mutilating, removing or modifying the data, program or any other form of information existing within or outside a computer system; • activating, installing or downloading a program that is designed to mutilate, remove or modify data, program or any other form of information existing within or outside a computer system; or • creating, altering, or destroying a password, personal identification number, code or method used to access a computer system/ <p>○ The offence of receiving unauthorised computer data could affect media access to data acquired by a whistleblower or placed in a cache such as Wikileaks.</p>
<p>Section 8: Data espionage</p>	<p>Without prejudice to the National Security Act, it is an offence to obtain computer data protected against unauthorized access without permission.</p> <p>○ This offence appears to overlap with the aspect of section 7 that covers unlawfully receiving unauthorised computer data. As in that case, this offence could be applied to data that has been shared after being obtained by whistleblowers.</p>
<p>Section 9: Illegal system interference</p>	<p>It is an offence to intentionally and unlawfully hinder or interfere with the functioning of a computer system or the usage or operation of a computer system.</p> <p>○ Section 3 defines "hinder" in relation to a computer system to include causing electromagnetic interference, corrupting the computer system by any means, or by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.</p>
<p>Section 10: Illegal device</p>	<p>It is an offence to unlawfully deal with or possess -</p> <ul style="list-style-type: none"> • a device, including a computer program, that is designed or adapted for the purpose of committing an offence; • a computer password, access code or similar data by which the whole or any part of a computer system is capable of being accessed with the intent that it be used by any person for the purpose of committing an offence.



	<ul style="list-style-type: none"> ○ “Device” is defined in section 3 as including a computer program, code, software or application; a component of computer system such as a graphic card, memory card, chip or processor; a computer storage component; or input and output devices. ○ It has been noted that the first part of this provision risks over-criminalisation, since the targeted conduct consists of dealing with or possessing a device that is designed or adapted to commit an offence and could thus include dual-use devices (meaning devices that are capable of being used for both lawful and unlawful purposes). There is also no requirement that the person must act without lawful excuse or justification, meaning that dealing with or possessing the device is an offence even if there was not malicious motive.” It should have been made clear in the definition that the person must deal with or possess the device without lawful excuse or justification, and that the device itself must be primarily designed or adapted to commit an offence.”⁷⁵ ○ The second part of this provision is narrower because it expressly requires an intent that the item (password, access code, etc) will be used for the purpose of committing an offence.⁷⁶
<p>Section 11: Computer-related forgery</p>	<p>It is an offence to intentionally and unlawfully input, alter, delay transmission or delete computer data, resulting in unauthentic data, with the intent that it be acted upon as if it were authentic, regardless of whether or not the data is readable or intelligible.</p> <ul style="list-style-type: none"> ○ The required intent helps to ensure that this offence is properly targeted.
<p>Section 12: Computer-related fraud</p>	<p>It is an offence to cause a loss of property to another person, with fraudulent or dishonest intent, by -</p> <ul style="list-style-type: none"> • any input, alteration, deletion, delaying transmission or suppression of computer data; or • any interference with the functioning of a computer system. <ul style="list-style-type: none"> ○ “Property” is defined in section 3 to include tangible and intangible property, including money and information. ○ The required intent helps to ensure that this offence is properly targeted.

As in most of the other countries examined, it is the content-based offences that are so far being used to stifle free expression.

CYBERCRIMES ACT, 2015 - CONTENT-BASED OFFENCES	
<p>Section 13: Child pornography</p>	<p>It is illegal to publish child pornography, through a computer system, or to make available or facilitate the access of child pornography through a computer system.</p> <ul style="list-style-type: none"> ○ “Child pornography” is defined in section 3 to mean “pornographic material that depicts presents or represents: <ul style="list-style-type: none"> * a child engaged in sexually explicit conduct; * a person appearing to be a child engaged in sexually explicit conduct; or * an image representing a child engaged in sexually explicit conduct.

⁷⁵ Id, page 21.

⁷⁶ Id.



	<ul style="list-style-type: none"> ○ “Child” means a person below the age of 18. ○ “Pornographic material” is not defined nor “sexually explicit conduct”. The lack of clear definition could be problematic in practice. ○ “Publish” is defined in section 3 as “distributing, transmitting, disseminating, circulating, delivering, exhibit[ing], exchanging, barter[ing], printing, copying, selling or offering for sale, letting on hire or offering to let on hire, offering in any other way, or making available in any way”. ○ There is no defence for materials with a genuine artistic, educational, legal, medical, scientific or public benefit purpose. ○ Because publishing includes “transmitting”, this offence would appear to capture “sexting” between children of similar ages, even where the material is shared only between the two of them.
<p>Section 14: Pornography</p>	<p>It is an offence to publish pornography or cause pornography to be published through a computer system or through any other information and communication technology. There is an enhanced penalty where the pornography is lascivious or obscene.</p> <ul style="list-style-type: none"> ○ “Publish” is defined in section 3 as “distributing, transmitting, disseminating, circulating, delivering, exhibit[ing], exchanging, barter[ing], printing, copying, selling or offering for sale, letting on hire or offering to let on hire, offering in any other way, or making available in any way”. Because publishing includes “transmitting”, this offence would appear to capture even private sharing of material between consenting adults. ○ None of the other key terms in this offence are defined (“pornography”, “lascivious” or “obscene”). which is likely to make enforcement very subjective. ○ There is no defence for materials with a genuine artistic, educational, legal, medical, scientific or public benefit purpose. ○ This is one of the few cybercrime laws in the SADC region that widely captures pornography that does not involve children. (There is also a broad provision on pornography in the chapter on cybercriminality in the Comorian Penal Code.)
<p>Section 15: Identity related crimes</p>	<p>It is an offence to use a computer system to impersonate another person.</p> <ul style="list-style-type: none"> ○ This offence makes no reference to intention and so could inhibit some instances of investigative journalism. ○ MISA-Tanzania points out that the existing phrasing could capture acceptable forms of communication, such as political satire in which an actor impersonates a public official.⁷⁷ ○ MISA-Tanzania suggests that any crime linked to identity must have been done with malice aforethought, and the intent to inflict substantial injury as a result. It also suggests the addition of defences based on acting in the public interest.⁷⁸
<p>Section 16: Publication of</p>	<p>Any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with</p>

⁷⁷ “Tanzania Media Trends Analysis Report, 2021”, The Media Institute of Southern Africa, Tanzania Chapter (MISA-Tanzania), 2021, page 23.

⁷⁸ Id.



<p>false information</p>	<p>intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public or counselling [sic] commission of an offence, commits an offence, and shall on conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years or to both.</p> <ul style="list-style-type: none"> ○ As one analysis notes, it is not clear how to determine whether information is “false” or “misleading”. Section 16 therefore does not provide sufficient guidance and gives an overly wide degree of discretion to those who enforce this law. Section 16 also goes beyond legitimate aims by restricting speech which is intended to mislead or deceive without causing any other harm. The minimum penalties are likely to be disproportionate, particularly for less serious offences where little or no harm actually occurs.⁷⁹ ○ The fact that the intent required can be merely an intent to “insult” means that this factor does not narrow the offence sufficiently. ○ MISA-Tanzania asserts that this provision could put online media outlets in “an unreasonable amount of danger”, and reports that there have been thousands of reports of alleged violations of this provision.⁸⁰ ○ The US State Department’s 2022 report on Human Rights Practices in Tanzania cites this provision as one of concern, stating: “While the number of arrests of individuals who made critical comments on electronic media regarding the government diminished under President Samia Suluhu Hassan, individuals were still publicly threatened for publishing critical remarks or opinions, even if they were factually true.”⁸¹ ○ As an example of the application of this provision, five persons were reportedly charged (in separate incidents) with insulting the late President John Magufuli on social media in 2016, while four persons were reportedly charged in 2021 with spreading false reports on social media claiming that President John Magufuli was seriously ill.⁸²
<p>Section 17: Racist and xenophobic material</p>	<p>It is an offence, through a computer system, to produce racist or xenophobic material for the purposes of distribution, to offer or make available such material, or to distribute or transmit such material.</p> <ul style="list-style-type: none"> ○ “Racist or xenophobic material is defined in section 3 as “any material which advocates, promotes or incites hatred, discrimination or violence, against any person or group of persons based on race, colour, descent, national or ethnic origin or religion”. ○ Note that this offence, unlike some other versions in the region, does not require that material based on religion is actionable only if religion is used as a pretext for one of the other grounds.
<p>Section 18: Racist and xenophobic motivated insult</p>	<p>It is an offence to insult another person through a computer system on the basis of race, colour, descent, nationality, ethnic origin or religion.</p> <ul style="list-style-type: none"> ○ There is no definition or qualification of the term “insult”.

⁷⁹ “[LEXOTA Country Analysis: Tanzania](#)”, last updated December 2022.

⁸⁰ “Tanzania Media Trends Analysis Report, 2021”, The Media Institute of Southern Africa, Tanzania Chapter (MISA-Tanzania), 2021, pages 23-24.

⁸¹ “[2022 Country Reports on Human Rights Practices: Tanzania](#)”, US State Department, section 2A.

⁸² “[Freedom of expression in Tanzania is on a downward spiral](#)”, Global Voices, 6 December 2022.



	<ul style="list-style-type: none"> ○ Although this provision is based on the Malabo Convention, criminalising “insult” seems extremely vague and overbroad. ○ Note that there is no requirement of an intention to insult another person, meaning that it could be possible for the crime to be inadvertently committed (based on a statement intentionally made, but made without the aim of insulting another). ○ Such a broad offence could easily lead to subjective enforcement, which is particularly worrying given the minimum sentence of a three million shilling fine or one year’s imprisonment or both.
<p>Section 19: Genocide and crimes against humanity</p>	<p>It is an offence to unlawfully publish or cause to be published, through a computer system, material which incites, denies, minimises or justifies acts constituting genocide or crimes against humanity. For the purpose of this section, “genocide” has the meaning ascribed to it under the Convention on the Prevention and Punishment of the Crime of Genocide, 1948.</p> <ul style="list-style-type: none"> ○ There is no definition of “crimes against humanity”. ○ “Publish” is defined in section 3 as “distributing, transmitting, disseminating, circulating, delivering, exhibit[ing], exchanging, barter[ing], printing, copying, selling or offering for sale, letting on hire or offering to let on hire, offering in any other way, or making available in any way”. Because publishing includes “transmitting”, this offence would appear to capture even a private message from one individual to another denying or minimising genocide or crimes against humanity if sent through a computer system. Communication with even a single individual <i>inciting</i> genocide or crimes against humanity is clearly justifiable, but merely expressing an opinion about historical events in a private communication raises harder questions about privacy and freedom of expression. The Malabo Convention does not specify whether or not the communication must be public; it merely calls on States to make it a criminal offence to “deliberately deny, approve or justify acts constituting genocide or crimes against humanity through a computer system”.
<p>Section 20: Unsolicited messages</p>	<p>It is an offence to do any of the following acts “with intent to commit an offence under this Act” -</p> <ul style="list-style-type: none"> • initiate the transmission of unsolicited messages. • relay or retransmit unsolicited messages, or • falsify header information in unsolicited messages. <ul style="list-style-type: none"> ○ The required intent to commit another offence under the Act narrows this offence considerably.
<p>Section 23: Cyber bullying</p>	<p>A person shall not initiate or send any electronic communication using a computer system to another person with intent to coerce, intimidate, harass or cause emotional distress.</p> <ul style="list-style-type: none"> ○ This is a very broadly defined offence. There is no further detail about the meaning of “intimidate”, “harass” or “cause emotional distress”. It also appears that the offence could be committed by a single communication. ○ This vague provision could lead to selective enforcement, which is particularly worrying given the minimum penalties of a five million shilling fine or three years’ imprisonment or both.



<p>Section 24: Violation of intellectual property rights.</p>	<p>It is an offence to use a computer system with intent to violate intellectual property rights protected under any written law. There are different minimum penalties, depending on whether the offence is committed on a commercial or a non-commercial basis.</p> <ul style="list-style-type: none"> ○ “Intellectual property rights” are defined in section 3 to mean “the rights accrued or related to copyright, patent, trademark and any other related matters”. ○ The requirement that there must be an intent to violate intellectual property rights helps to prevent innocent persons from being prosecuted.
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In general, **attempting, abetting or conspiring to commit any offence under the Act** – whether technical or content based – is also an offence.⁸³

In respect of investigations, the law authorises the police officer in charge of a police station or a law enforcement officer of a similar rank to issue an order for **search and seizure** in respect of a computer system, with no judicial involvement.⁸⁴

The same procedure applies to an order compelling a person to disclose data relevant to the investigation of an offence. Disclosure of data includes obtaining **subscriber information** from service providers.⁸⁵

The police officer in charge of a police station or a law enforcement officer of a similar rank can issue an **expedited preservation order** that is valid for up to 14 days, and a court may extend the order for “such period as the court may deem necessary”.⁸⁶

The same law enforcement officials may issue an order requiring the disclosure, collection or recording of **traffic data** associated with a specified communication during a specified period, or an order to collect or record **content data** associated with specified communications, including through the use of technical means.⁸⁷

Court involvement is required only where the data disclosure or preservation cannot be done without the **use of force** due to resistance,⁸⁸ or where law enforcement officers want to use a “**forensic tool**” for evidence collection (which can be authorised by a court for 14 days at a time).⁸⁹

The Act includes procedures for a **take-down notification**. A person can provide a notification to a service provider that there is data or activity that infringes the rights of the complainant or a third party, or that there is some unlawful material or activity online. It is a criminal offence for a person to lodge a take-down notification with a

⁸³ [The Cybercrimes Act 14 of 2015](#), sections 25-27. Section 2 defines “abetting” as “to encourage or assist someone to commit a crime or other offence”.

⁸⁴ Id, section 31.

⁸⁵ Id, section 32.

⁸⁶ Id, section 33.

⁸⁷ Id, section 34-35.

⁸⁸ Id, section 38.

⁸⁹ Id, section 39. A “forensic tool” is defined in section 3 as “forensic tool” means “an investigative tool or device including software or hardware installed on or in relation to a computer system or part of a computer system and used to perform tasks which includes keystroke logging or collection of investigation information about a use of a computer or computer system”.



service provider knowing that it materially misrepresents the facts. If the service provider fails to act upon the notification, the complainant may request a competent authority to take appropriate action.⁹⁰

A service provider that does not take action on a take-down notification becomes liable for the material in question as if they had initiated the content.⁹¹ However, the protection against liability for hosting, caching or providing a hyperlink to content appears to work a bit differently. A hosting provider is not liable for information stored at the request of a user of the service if that provider immediately removes or disables access to the information *after receiving an order to do so from any competent authority or court*, and also immediately informs the relevant authority upon becoming aware of illegal information.⁹² The duties of the hyperlink provider are similar.⁹³ A caching provider can avoid liability by acting immediately to remove or to disable access to stored information upon obtaining actual knowledge that access to the information has been removed or disabled at the initial source of the transmission, or that a court or the relevant authority has ordered removal or disablement.⁹⁴

The concerns identified by an analysis of the take-down notification procedure under the Electronic and Postal Communications (Online Content) Regulations, 2020 are also applicable here.⁹⁵

B) ELECTRONIC AND POSTAL COMMUNICATION ACT, 2010

Section 118 of the Electronic and Postal Communications Act makes it an offence to use network facilities, network services, applications services or content services to knowingly make, create, solicit or initiate the transmission of any comment, request, suggestion or other communication which is **“obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person”**. It is also an offence to use any applications service **to initiate a communication “with intent to annoy, abuse, threaten or harass any person at any number or electronic address”**. This applies whether the communication is continuous, repeated or otherwise, and regardless of whether actual communication ensues. It also applies regardless of whether the person initiating the communication discloses his or her identity. In addition, it is an offence to use any network services or applications service to provide an **obscene communication** to any person.⁹⁶

As with many of the content-based offences in the Cybercrime Act, these provisions are very broad in scope, leaving an overly wide degree of discretion to those charged with the enforcement of this law.⁹⁷

⁹⁰ Id, section 45.

⁹¹ Id, section 45(4).

⁹² Id, section 41.

⁹³ Id, section 43.

⁹⁴ Id, section 42.

⁹⁵ [Analysis of the Electronic and Postal Communications \(Online Content\) Regulations, 2020](#), Tanzania Media Council, 2020, page 4 and pages 12-13, discussed below.

⁹⁶ [The Electronic and Postal Communications Act \[Chapter 306 R.E. 2022\]](#), section 118(a)-(c).

⁹⁷ See [“LEXOTA Country Analysis: Tanzania”](#), last updated December 2022.



C) ELECTRONIC AND POSTAL COMMUNICATIONS (ONLINE CONTENT) REGULATIONS, 2020

The **Electronic and Postal Communications (Online Content) Regulations, 2020**⁹⁸ were made in terms of section 103 of the Electronic and Postal Communication Act, 2010, which sets a number of parameters for such regulations.⁹⁹ The 2020 regulations replaced a 2018 set of regulations with the same title. The current regulations were amended in 2022.¹⁰⁰

These regulations apply to both online content service providers (which covers internet content broadcasting to the public through television, radio, blog, weblog, instant messaging tools, social media and other apps) and online content users, as well as others. The regulations define “content” as information in the form of “speech or other sound, data, text or images whether still or moving except where transmitted in private communications”.¹⁰¹

The regulations as amended make it an offence to provide “online media services” without a licence, with this being defined as “online content services provided for the purpose of news and current affairs in a manner similar to, or in a manner that resembles service providers licensed under the Act.¹⁰² The licencing requirement has been referred to as “tactical censorship” which may be used to constrain press freedom. It has also been suggested that it violates Article 18 of the Constitution as an unreasonable restriction of individuals’ right to seek, receive and impart information regardless of national frontiers – given that the Internet is a key mechanism for realising that right.¹⁰³ The organization “Article 19” makes the following point about licencing online content:

The UN Human Rights Committee has underlined that regulatory systems should take into account the differences between the print and broadcast sectors and the internet. Broadcast media rely on a limited resource: the electromagnetic spectrum. Different users (radio and TV stations, mobile phone services, radar etc.) compete for scarce frequencies, and the State must establish a system to allocate them, or the result would be chaos on the airwaves. No such necessity exists with regard to print and online media; the number of such publications that can exist alongside each other is technically unlimited. Nor can concerns about content justify the imposition of a licence requirement.¹⁰⁴

⁹⁸ [Electronic and Postal Communications \(Online Content\) Regulations, 2020](#).

⁹⁹ [The Electronic and Postal Communications Act \[Chapter 306 R.E. 2022\]](#), sections 103-ff.

¹⁰⁰ [Electronic and Postal Communications \(Online Content\) \(Amendment\) Regulations, 2022](#).

¹⁰¹ [Electronic and Postal Communications \(Online Content\) Regulations, 2020](#), as amended by the [Electronic and Postal Communications \(Online Content\) \(Amendment\) Regulations, 2022](#), regulation 2 read with the definition of “online content service providers” and “content” in regulation 3.

¹⁰² *Id.*, as amended by the [Electronic and Postal Communications \(Online Content\) \(Amendment\) Regulations, 2022](#), regulation 4 read with the definition of “online media services” in regulation 3.

¹⁰³ [Analysis of the Electronic and Postal Communications \(Online Content\) Regulations, 2020](#), Tanzania Media Council, 2020, pages 3 and 6.

¹⁰⁴ [“The Electronic and Postal Communications \(Online Content\) \(Amendment\) Regulations, 2021: Submission to the Tanzania Ministry of Information, Culture and Sports”](#), Article 19, section B(ii) (footnote omitted).



The regulations also forbid the online publication of any “prohibited content”, which is described in a long list set out in the Third Schedule to the regulations.¹⁰⁵ This entire list is reproduced below because the breadth of the prohibited topics is truly shocking. The publication of any prohibited content is an offence punishable by a minimum fine of five million shillings or 12 months’ imprisonment or both. If a licensee has published prohibited content, the Content Committee may issue a warning, require an apology to the public and the individual victim (if any), order the removal of the offending content or impose a fine.¹⁰⁶

PROHIBITED CONTENT

Any of the following shall be considered as prohibited content for purposes of these Regulations:

1. SEXUALITY AND DECENCY

- (a) content that motivates, promotes or facilitates publishing or exchanging child pornography, actual pornography, explicit sex acts, nudity and vice, save for related scenes approved by the body responsible for film classification and certification;
- (b) content that depicts, motivates, promotes or facilitates publishing or exchanging of homosexuality, adultery, prostitution, sex crimes, rape or attempted rape and statutory rape, or bestiality;
- (c) content that motivates, supports or promotes practices or trading of sexual or immoral goods such as movies, photos, drawings, books, stories, sexual games, toys and related things.

2. PERSONAL PRIVACY AND RESPECT TO HUMAN DIGNITY

- (a) content that impersonates or claims status of others for fraudulent purposes;
- (b) content that insults, slanders and defames other persons, or exposes news, photos or comments related to a person’s privacy, or publication of private information regardless of whether the information is true where publishing the same may harm the person;
- (c) content that motivates or promotes phone tapping, espionage, data theft, tracking, recording or intercepting communications or conversation without right; and
- (d) content that promotes, motivates or encourages practices of witchcraft, enchantment, or sorcery.

3. PUBLIC SECURITY, VIOLENCE AND NATIONAL SAFETY

- (a) content against the State and public order including content that aims to or publishes information, news, statements or rumours for the purpose of ridicule, abuse or harming the reputation, prestige or status of the United

¹⁰⁵ Id, section 16(1).

¹⁰⁶ Id, regulation 21.



- Republic, the flag of the United Republic, the national anthem or the United Republic's symbol, national anthem or its logos;
- (b) content that calls for or motivates, promotes or provokes noncompliance to the laws and regulations;
 - (c) content that is involved in planning, organizing, promoting or calling for demonstrations, marches or the like which may lead to public disorder;
 - (d) content that would threaten the security of the United Republic or affect public order;
 - (e) content that includes news of official confidential communications or military affairs;
 - (f) content that would harm the national currency or lead to confusion about the economic condition in the country;
 - (g) content that incites, encourages or enables the commission of a crime against the United Republic or its citizens;
 - (h) content that is likely to threaten the stability of the United Republic or its safety, unity or security, or harming national unity or social peace;
 - (i) content that portrays violence, whether physical, verbal or psychological, that can upset, alarm and offend viewers and cause undue fear among the audience or encourage imitation;
 - (j) content that portrays sadistic practices and torture, explicit and excessive imageries of injury and aggression, and of blood or scenes of executions or of people clearly being killed;
 - (k) content that causes annoyance, threatens harm or evil, encourages or incites crime or leads to public disorder or that may threaten national security or public health and safety;
 - (l) content which advocates hate propaganda or promotes genocide or hatred against an identifiable group;
 - (m) content that promotes or favours what would raise sedition, hatred or racism or sectarianism or harming national unity or social peace or disturb the public order or public morals.

4. CRIMINAL ACTIVITIES AND ILLEGAL TRADE ACTIVITIES

- (a) content that motivates, promotes or facilitates illicit drugs, criminal acts and skills including content that calls for, promotes or provides information about how to carry out acts of crime or felony or contributes to or facilitates carrying out or supporting the same such as theft, fraud, robbery, forgery, faking, bribery, killing, suicide, blackmail, threat, rape, commercial cheating and breaching the properties of others, abduction, evasion from application of law, money laundering, smuggling prohibited content and other crimes punishable by the law;
- (b) content that promotes or contributes to trading with drugs and mind affecting substances and the manner of using or manufacturing the same or obtaining drugs or facilitating their circulation in circumstances that are not legally authorized;
- (c) content that motivates, promotes or facilitates trading in prohibited or restricted goods, commodities or services in the United Republic, including illicit drugs, prostitution, or goods that require licence from the competent



authorities and are being promoted or circulated without authorization from the competent authorities;

- (d) content that promotes gambling and similar activities such as bets and lottery and those related to electronic gambling activities;
- (e) content that motivates, promotes or facilitates terrorist groups or any illegal group, association, organization or body;
- (f) content that publishes methods of making fire or explosive devices or any other tools used in terrorist acts.

5. HEALTHY [SIC] AND PUBLIC SAFETY

- (a) content of health establishments, medical and pharmaceutical practices in violation of the laws;
- (b) content that includes health advertisements in violation of Cabinet resolutions concerning health advertisements;
- (c) content that is used in promoting or trading pharmaceuticals that are issued against prescription and to provide the same without asking for the medical prescription;
- (d) content that promotes medicine and medical products that are prohibited or unlicensed including dietary supplements, weight loss products, weight increase and unlicensed cosmetic pills and creams.

6. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

- (a) content that infringes the rights of intellectual property such as providing and publishing movies, photos, drawings, books, electronic programs and games, encrypted TV and radio channels and other intellectual property rights without permission from right owner;
- (b) content that provides information, tools and methods aiming to infringing [sic] intellectual property rights and penetrating the protection means used for protecting such rights such as decoding movies and coded TV channels and operation of copied magnetic diskettes and copied electronic programs and games and deactivation of protection systems designed exclusively for combating piracy.

7. RESPECT TO RELIGION AND PERSONAL BELIEFS

- (a) content which contains or promotes offending, defaming, insulting, ridiculing or violating any of the religions or any of its rites, sanctities or divine books, or interfering with freedom to practice one's religion by violence or threat;
- (b) content that motivates, promotes or facilitates incitement, or ridicule, hatred against a certain religious belief or expression that motivates, promotes or facilitates religious subjugation or apostasy;
- (c) content that would make any form of discrimination and provoke hate speech or inciting [sic] tribal or religious prejudices with intent to incite hatred between individuals and groups;
- (d) content that exploits religion to disbelief individuals or groups by using one of the methods of expression or using any of the means in order to achieve special interests or illegal purposes.

**8. PUBLIC INFORMATION THAT MAY CAUSE PUBLIC HAVOC AND DISORDER**

- (a) content that promotes, advocates, encourages, or makes available instructions and guidance on illegal activities such as bomb-making, illegal drug production or counterfeit products;
- (b) circulating or making available information with regards [to] possible terrorist attacks, droughts, weather forecasts or occurrence of natural calamities without the approval of the respective authorities;
- (c) content with information with regards to the outbreak of a deadly or contagious diseases in the country or elsewhere without the approval of the respective authorities;
- (d) circulating or making available information with regards to promotion of medical drugs and general medical products not approved by respective authorities.

9. USE OF BAD LANGUAGES AND DISPARAGING WORDS

Content that uses bad language, such as the use of disparaging or abusive words which is calculated to offend an individual or a group of persons, crude references words, in any language commonly used in the United Republic, which are considered obscene or profane including crude references to sexual intercourse and sexual organs, and hate speech,

10. FALSE, UNTRUE, MISLEADING CONTENT

Content that is false, untrue, [or] misleading which is likely to mislead or deceive the public unless where it is clearly pre-stated that the content is a satire, parody or fiction; and where it is preceded by a statement that the content is not factual.

Portions of the list of prohibited content (paragraph 2(b)) constitute criminal defamation in another guise, which, even if applied with moderation, still casts “a long shadow: the possibility of being arrested by the police, held in detention and subjected to a criminal trial will be in the back of the mind of a journalist when he or she is deciding whether to expose, for example, a case of high-level corruption”.¹⁰⁷ It has also been noted that paragraph 2(b) appears to eliminate the defence of truth.¹⁰⁸

¹⁰⁷ [Analysis of the Electronic and Postal Communications \(Online Content\) Regulations, 2020](#), Tanzania Media Council, 2020, page 11.

¹⁰⁸ *Id.*



Regarding the list of prohibited content, one analysis states:

The prohibited content is provided in overly broad terms prone to multiple interpretation[s] and manipulation. There are no clear definitions of some of the prohibited content and some are worded in open-ended fashion inviting the subjective interpretation of the enforcers. These may be used to restrict or censor certain information as prohibited content in case the Authority or Government doesn't like them.¹⁰⁹

Another commentary asserts that, while some of the types of prohibited content are targeted at the legitimate aims of protecting public order, public health and the rights of others, there are broad categories of prohibited speech that do not advance legitimate aims according to international human rights standards.¹¹⁰

The 2020 regulations contain an ever more rigorous **take-down notification** procedure than the Cybercrime Act. A person affected by prohibited content can notify a licensee of this, and the licensee is then required to take steps to remove the prohibited content *within two hours*. If the subscriber who initiated the prohibited content fails to remove it within the two-hour period, the licensee must suspend or terminate the subscriber's account. The licensee is required to take the same steps if the TCRA orders the removal of prohibited content.¹¹¹ A local commentary identifies the following concerns:

This is problematic in two ways. First, the Regulations do not contain any safeguard against malafide intention by individuals who may use that loophole to affect the rights of other individuals to express their opinions. This is because under the regulation the licensee or host is under legal obligation to take down the impugned post within 2 hours after notification. Then the overriding question is who judges or decides whether the content is actually a prohibited content? Is it the offended person, TCRA or licensees? In actual sense, the intermediaries seem to assume the role of the courts or judges and have been empowered to restrict the right of others to express their opinions. Second, there is no [...] express prescribed mechanism to challenge such take down, e.g appeals etc. What if the person is aggrieved by such decision to take down his or her posts? What is the remedy? The Regulations are silent on this.¹¹²

The same commentary goes on to assert that it is unacceptable for third parties such as internet service providers "to act on behalf of the authorities as censors" by taking down content. Such parties are not judicially qualified to determine whether a certain website or content might contravene the law and, due to the legal provisions on liability, they are likely to err on the side of caution in borderline cases. Furthermore, there are no safeguards to ensure that such third parties do not abuse their powers.

¹⁰⁹ Id, page 3.

¹¹⁰ "LEXOTA Country Analysis: Tanzania", last updated December 2022.

¹¹¹ [Electronic and Postal Communications \(Online Content\) Regulations, 2020](#), regulation 11(3)-(4).

¹¹² [Analysis of the Electronic and Postal Communications \(Online Content\) Regulations, 2020](#), Tanzania Media Council, 2020, page 4.



The absence of any requirement for a court order or due process safeguards such as a right to notice and appeal by the author of the content is “deeply inappropriate” and contrary to international standards on freedom of expression.¹¹³

The 2020 regulations also restrict **anonymity**. Regulation 9(d) requires licensees to have in place mechanisms that can identify the source of all content. It has been noted that this makes it virtually impossible to post anonymous content online, and that with “no guarantee of anonymity, individuals may not be free to express their opinion and thus their right to freedom of expression is impacted”.¹¹⁴

Licensees are also required under regulation 9(c) to employ **content filtering mechanisms** to safeguard against prohibited content. This requirement may result in restricted access to certain information that is not actually prohibited, based on differing interpretations of the broad definitions of prohibited content.¹¹⁵

D) MEDIA SERVICES ACT, 2016

As indicated above, despite the ruling of the East African Court of Justice and some amendments made to the Act in 2023, all of the provisions identified as being unjustifiable restrictions on freedom of expression remain in place.¹¹⁶

The 2023 amendments to section 50 of the Act removed references to publications that are “injurious to the reputation, rights and freedom of other persons” – but criminal defamation continues to be covered by section 35 of the Media Services Act, and defamatory content is still treated as prohibited content under the Electronic and Postal Communications (Online Content) Regulations, 2020 discussed above.

Also, section 50 still contains a broad prohibition on the publication of information that is intentionally or recklessly falsified – or in fact any statement – which threatens “the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health”, as well as false statements in general.¹¹⁷

E) THE PENAL CODE [REVISED EDITION 2022]

There are several provisions of the Penal Code that are relevant to freedom of expression.¹¹⁸ Some of the key offences of this nature are briefly described below:

- Section 63B concerns the offence of **raising discontent and ill-will for unlawful**

¹¹³ Id, pages 12-13. See also “[Tanzania: Electronic and Postal Communications \(Online Content\) Regulations 2018: Legal Analysis](#)”, Article 19, April 2018, at pages 21-15, making similar points about a similar take-down notification procedure in the previous 2018 regulations.

¹¹⁴ Id, pages 5, 6-7. Note that regulation 9(d) was initially 9(e), prior to the 2022 amendments ([Electronic and Postal Communications \(Online Content\) \(Amendment\) Regulations, 2022](#)).

¹¹⁵ Id. Note that regulation 9(c) was initially 9(d), prior to the 2022 amendments ([Electronic and Postal Communications \(Online Content\) \(Amendment\) Regulations, 2022](#)).

¹¹⁶ See the discussion of this ruling in section 16.1 above.

¹¹⁷ [Media Services Act 12 of 2016](#), as amended by [The Written Laws \(Miscellaneous Amendments\) Act, 2023](#)

¹¹⁸ [The Penal Code \[Chapter 16\], Revised Edition 2022](#).



purposes. This involves making a statement to any assembly (defined as a gathering of seven or more persons) that is “likely to raise discontent amongst any of the inhabitants of the United Republic or to promote feelings of ill-will between different classes or communities of persons of the United Republic”. There are a number of exceptions, including statements made solely to show that the Government has been misled or mistaken in any of its measures or to point out errors or defects in the Government or its policies, the Constitution, legislation or the administration of justice with a view to remedying those errors or defects. Prosecution for this offence requires the written consent of the Director of Public Prosecutions.

- Section 63C makes **hate speech** an offence. This applies to various forms of expression (words, behaviour, publications, performances, programmes and online speech) where there was an intent “to stir up ethnic hatred”, or where that result was likely. Despite the reference to “ethnic hatred”, “hatred” is more broadly defined as “hatred against a group of persons defined by reference to colour, race, gender, disability, conscience, belief, nationality or ethnic or national origins”.
- Section 89(1) makes it an offence to use **obscene, abusive or insulting language** to any other person, in a manner that is likely to cause a breach of the peace.
- Section 129 makes it an offence to utter words or sounds, or to use gestures or objects with “the **deliberate intention of wounding the religious feelings of any person**”. The offending words or actions must take place in the presence of the person in question to constitute the offence.
- Section 169 makes it an offence, with a few narrow exceptions, to make or share (via any form of communication) photos, pictures, videos or images of **corpses, dead persons, victims of crimes or gruesome incidents**.
- Section 175 makes it an offence to distribute or possess any writing, drawing, painting, poster, photograph or cinematograph film that is “**obscene**” or “**tending to corrupt morals**”. These key terms are not defined and could be very widely or subjectively interpreted.
- The provisions on **criminal defamation** (sections 187-194) have been repealed. However, as discussed above, some other legal provisions that remain in force are tantamount to forms of criminal defamation.

F) ZANZIBAR

The **Zanzibar Penal Act 6 of 2018** also contains some offences which might be applied to limit freedom of expression.¹¹⁹ Some of the key provisions are the following, although the list is not exhaustive:

- Section 43 makes it an offence to publish or reproduce any **false statement which is likely to cause fear and alarm to the public or disturb the public peace**.
- Section 45 makes it an offence to publish anything that might degrade, revile or expose to hatred or contempt a **foreign ambassador or dignitary** with the intent to disturb peace and friendship between Zanzibar and the country in

¹¹⁹ [Zanzibar Penal Act 6 of 2018](#).



question.

- Section 104 makes it an offence to write any word, utter words or sounds, or to use gestures or objects, with “the **deliberate intention of wounding the religious feelings of any person**”. Unlike the corresponding offence in the Tanzanian Penal Code, this offence covers offensive writings.
- Section 106 makes it an offence to **promote disharmony, enmity, hatred or ill-will** between different groups on the basis of race, religion, place of birth, residence, language, community “or any other ground whatsoever”.

Despite the fact that the Cybercrimes Act applies to both Mainland Tanzania and Zanzibar, the **Zanzibar Penal Act 6 of 2018** contains a chapter on “Offences connected with Computers” which overlaps to some extent with parts of the Cybercrimes Act, 2015. Briefly, this chapter covers the following:

- **section 369: offences against intellectual property** (which also covers modification, destruction or disclosure of data for purposes of a scheme to defraud or to obtain property)
- **section 370: offences against computer equipment or supplies** (unauthorised modification of such items regardless of intent, with an enhanced penalty where there is an intent to defraud or to obtain property)
- **section 371: destruction of computer equipment** (unauthorised destruction of damage is an offence regardless of intent)
- **section 372: interfering with data** (where this is done intentionally or recklessly, without lawful excuse or justification)
- **section 373: interfering with computer system** (where this is done intentionally or recklessly, without lawful excuse or justification)
- **section 374: illegal interception of data** (where there is intentional interception, without lawful excuse or justification, of any non-public transmission or an electromagnetic emission that is carrying data)
- **section 375: illegal devices** (covering production, sale and other dealings in (a) a device designed or adapted for the purpose of committing an offence, or (b) a computer password, access code or other data with intent that it be used for the commission of an offence; possession of a device as described is an offence if done with the intent that it be used for the commission of an offence)
- **section 376: offences against computer users** (covering unauthorised access and denial of service, with an enhanced penalty where there is an intent to defraud or to obtain property)
- **section 377: fraud and related activities on Government computers** (unlawful access via a computer to various categories of Government information)
- **section 378: definitions.**



According to a secondary source, **The Registration of Newsagents, Newspapers and Books Act 5 of 1988** contains a provision on seditious publications (section 48(1)), provision on criminal libel (sections 53-ff) and an offence regarding publication of anything that might degrade, revile or expose to hatred or contempt a foreign ambassador or dignitary with the intent to disturb peace and friendship between Zanzibar and the country in question (section 61).¹²⁰

Also, according to a secondary source, the **Zanzibar Arts and Censorship Council Act 7 of 2015** contains several offences relating to pornography and child pornography (sections 46, 47 and 53).¹²¹

G) SIM CARD REGISTRATION

The Electronic and Postal Communications (SIM Card Registration) Regulations, 2020 were issued in terms of The Electronic and Postal Communications Act. They require all SIM cards to be “biometrically registered”. Individual customers must present their national ID cards, which will be verified with the National Identification Authority (NIDA) against the customer’s online or electronic fingerprint. The service provider is required to keep records of the subscriber with the details electronically retrieved from NIDA. Company SIM cards must be registered against the fingerprint of a company representative, along with valid certified copies of the company’s Taxpayer Identification Number Certificate and other incorporation or registration documents. There are also rules for identity verification of other categories of customers, including foreign visitors, institutions, minors, refugees and diplomats. A licenced service provider is not allowed to activate an unregistered SIM card. The regulations also place limits on the maximum number of SIM cards that can be registered by one individual, company or institution without authorisation from the TCRA.¹²²

H) TAKE-DOWN NOTIFICATIONS

Take-down procedures are contained in both the **Cybercrimes Act** and the **Electronic and Postal Communications (Online Content) Regulations, 2020** and have already been discussed above.

¹²⁰ Justine Limpitlaw, [Media Law Handbook for Southern Africa – Volume 3](#), “Chapter 14: Tanzania”, Konrad Adenauer Stiftung, 2021, pages 117, 120-122.

¹²¹ *Id.*, page 118.

¹²² [The Electronic and Postal Communications \(SIM Card Registration\) Regulations, 2020](#).