



Brief Analysis of Media Services Bill 2016

This short paper analyses the Media Service Bill, as published in September 2016, with the objective of putting forward recommendations for how the bill can be improved. The paper draws on notes prepared by the Centre for Law and Democracy on a previous draft of the bill, which includes references to specific texts of international law.

SUMMARY OF KEY CONCERNS AND RECOMMENDATIONS

The Media Services Bill, as published in September 2016, is an opportunity to address a number of long-recognised concerns with media law in Tanzania. In particular, by replacing the highly restrictive 1976 Newspaper Act, the new bill could bring media law up to date and into line with international law and best practices.

In some ways, the bill is an improvement on the previous version, dating from 2015, that was withdrawn from parliament following vocal media and public criticism. The new bill replaces a proposed government-controlled regulatory council with a more independent council, and relaxes slightly some of the controls and restrictions on the media that characterised the 2015 bill. However, the bill still contains major weaknesses that would fundamentally undermine the independence of the media, most notably by introducing a government-controlled accreditation system for journalists. Enacting the bill in its current form would be a backward step in Tanzania's democratisation process.

Key concerns in the bill include the following:

- i. The bill would establish an accreditation system for journalists and requires that the print media should be licensed, giving the government full control over both mechanisms. In both cases, this goes well beyond what it considered acceptable in international law and in a democratic context. In the case of the accreditation of journalists, these measures would have the effect of bringing the profession of journalism entirely within the control of government, severely limiting the ability of newspapers and others to perform their vital watchdog role, and contrary to freedom of speech and international law. Licensing requirements for newspapers should be removed and the Journalists Accreditation Board should be scrapped, along with any requirements for licencing of individual journalists.
- ii. The bill would establish heavy restrictions on media operations, including a requirement that private media should broadcast or publish news as directed by the government and limits on the editorial independence of public media. These restrictions should be removed, and the bill should clearly state that the editorial independence of both public and private media must be respected.
- iii. The bill gives an unduly broad definition of defamation that is not in line with international law. In particular, the bill should be revised to allow that any statement which is true or which is an opinion cannot be considered defamatory.
- iv. The bill establishes a broad, unclear and vague set of offences, including sedition clauses that go well beyond what is considered normal in a democratic context. These clauses should be removed from the bill.

DETAILED ANALYSIS

1. Regulatory bodies and licensing

The bill established two regulatory bodies – the Independent Media Council (clauses 23-31) and the Journalist Accreditation Board (clauses 10-20).

In the case of the Council, the 2016 bill represents a considerable improvement on the 2015 version, in that it represents a much more independence regulatory body than was previously proposed. Specifically, all accredited journalists (see below) will be members of the Council, and will have the responsibility of electing council leaders who will in turn appoint a secretariat. This is a significant improvement on the previously proposed arrangements where government ministers would have had full control of such appointments and of the media code-of-conduct that the council is tasked with developing and implementing.

However, there are related changes that are problematic. First, the authority to issue licenses to the print media has been taken away from the council and given to the Director of Information Services, an appointed government official. This includes the power to “suspend or cancel” a license (9(b)). Licensing of newspapers is considered contrary to international law and to freedom of expression.

Further, the terms of such licenses, including the process for applying for a license are not specified, only that the Minister of Information has the power to set such terms and processes through regulations. Similarly, it is very unclear what rights a newspaper would have to appeal a decision to suspend or cancel a license, or what process the Director would be required to go through before making such a decision, or what justification they would need to give. Potentially, this represents a continuation of the current situation under the much-criticised 1976 Newspaper Act.

There is more clarity in the new bill regarding online media. In most cases, it is clear that the bill does not now apply to online media, which is both more realistic and appropriate. However, licensing requirements appear to cover a very wide range of individuals or organisations – anyone who publishes, imports, sells, distributes or publishes print media, which would potentially apply to any organisation producing a leaflet, any international magazine being made available within the country, and even any street newspaper vendor.

Perhaps the most serious concern of the whole bill is the requirement that all journalists must seek accreditation, and that those without such accreditation would not be allowed to practice as journalists. International law is very clear that it is not legitimate to license journalists or to impose conditions on who may be a journalist. Practicing as a journalist is a recognised human right that cannot therefore be subject to the kind of controls that may apply to other professions.

The Journalists’ Accreditation Board would be entirely appointed by the Minister, and would have wide-ranging powers to issue, deny and suspend press cards, without which a journalists would not be permitted to practice. The processes for seeking accreditation and for suspending accreditations, etc. are far from clear. In combination, these measures would have the effect of bringing the whole profession of journalism entirely within the control of government. This would severely limit the ability of newspapers and others to perform their vital watchdog role and to provide scrutiny of government. It is entirely contrary to freedom of speech, and to international law.

To bring the bill in line with international standards would require the following alterations:

- i. Scrap the Journalist Accreditation Board.
- ii. Remove all requirements and mechanisms for licensing / accreditation of individual journalists, and for a code of ethics for individual journalists.
- iii. Remove requirements for the licencing of newspapers, replacing them with (at most) a simple requirement that a company must “notify” the government (perhaps the Director of Information Services, or TCRA) of their intention to publish a newspaper.

2. Intrusive powers and content restrictions

In clause 7(1)(a), the bill significantly undermines the independence of public media, requiring that it should “provide media services to the government” and “provide public awareness on development matters from the government”. This is contrary to international best practice that publicly-owned media should operate as independently as possible from government.

The requirement that all private media houses should “hook with the public broadcaster for news” at 8pm every night has been removed in the new bill. However, it has been replaced with a new requirement “to broadcast or publish news or issues of national importance as the government may direct,” which appears to give the government unrestricted control over the content of newspapers and of radio and TV broadcasts.

The bill also gives the Minister extensive and intrusive powers over the media that go well beyond what is recognised in international law. In particular, this includes unlimited discretion to ban the importation of any publication (Clause 54).

Further the bill gives the Director of Information Services, the police and others the power to seize equipment owned by the media with very little just cause and no court approval required.

To address these issues, the following revisions to the draft bill are recommended:

- i. The bill should make it clear that both public and privately-owned media should enjoy full editorial independence within (in the case of public media) an overall mandate to provide comprehensive news services to the public.
- ii. The requirement for all media houses to publish or broadcast content directed by the government should be removed.
- iii. Any power to ban the importation of media content should be given to the courts rather than to a government-controlled body, and should be limited to clearly defined reasons.
- iv. The power to seize equipment should be limited to extreme breaches of the law, and should require a court order.

3. Complaints mechanisms

By establishing a media regulatory council as an independent body, the new bill is an improvement on the 2015 version. The bill provides for the powers of the council to deal with complaints, and requires that a code of conduct should be established by the media industry itself.

Further, the bill provides for appeals to the High Court, where either party is unsatisfied with the Council’s adjudication on a complaint. This is also a significant improvement in that it replaces the role given to the Fair Competition Tribunal – an inappropriate body for such a role – in the 2015 version of the bill.

4. Defamation

In Part IV, the bill sets out a definition of defamation and procedures for handling defamation cases that go beyond what is recognised as legitimate in international law. In particular, in clause 34(1), the bill allows that a published statement can be considered as defamatory even if it is true. The bill requires that a statement should be both true and published “for the public benefit”. This is contrary to international law.

International standards for defamation law, including the *Declaration of Principles on the Freedom of Expression in Africa*, also state that no one should be found liable for expressing their opinion. This defence is not unambiguously included in the bill’s treatment of defamation. Similarly, the bill does not allow the

defence that a statement related to a public figure and it was reasonable to publish it, which is also recognised in international law on defamation.

Finally, the new bill gives the authority to handle defamation cases to the courts, rather than to the Journalist Accreditation Board as was the case in the 2015 bill. The courts are a much more appropriate body to handle such cases.

The following revisions are recommended:

- i. Amend the allowable defences in defamation cases to provide that no true statement can be considered defamatory
- ii. Similarly, add to the list of allowable defences that a statement was an opinion, and that a statement related to a public figure and that it was reasonable to publish it.

5. Offences

Part VII of the bill includes several broad or vague criminal offences and some harsh punishments. This includes an offence of making a public statement that threatens the economic interests of the state or public morality of health, false statements and seditious publications (Clause 47). Further, this clause is ambiguously written, leaving its meaning very unclear. The prohibition of publication of false statements is repeated in clause 51.

Clause 49 defines sedition in very broad terms, including “raising discontent or disaffection among people”, which would apply to almost all criticism of government. This goes well beyond what is considered acceptable in a democratic context. Further, clause 50 makes it an offence even to simply possess seditious material.

To address these concerns, the following measures are recommended:

- i. Clauses 47 to 53 should be removed