Input to Regulations for Implementation of the Media Services Act, Number 12 of 2016
Twaweza
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Introduction
The Media Services Act of 2016 introduces a range of new mechanisms governing the operations of the media. This note provides suggestions on regulations for implementation of the Act, in response to an invitation (Kumb. Na. CDA.7/238/01C) from the Ministry of Information, Culture, Arts and Sports.

The invitation requests input on seven specific issues and one open heading for any other issues. These are listed below, with suggestions founded in the necessity of ensuring the Act is implemented in ways that do not impede on freedom of speech, freedom of the press and other democratic rights. These suggestions are further drawn from Twaweza’s previous analysis of the Act and from analysis by the Centre for Law and Democracy (CLD)1.

Finally, as the bulk of the Act relates either to journalists or to the print media, it is assumed here that the regulations will follow the same pattern, leaving regulation of the broadcast media to existing laws, primarily the Electronic and Postal Communications Act and its associated regulations.

Suggestions on specific issues as requested

a) Level of education required for a journalist to become accredited

The Act establishes 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 context2. 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.

There is an opportunity, through the regulations for implementation of the Act, to address some of these issues. In particular, we believe that any person can have the necessary skills to practise as a journalist, regardless of their educational background. We also believe that freedom of speech requires that there should be no restriction on the profession of journalism. As noted above, international law backs up this view. We therefore propose the following:

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1 Note on Regulations to be adopted under the Media Services Act, 2016
2 Principle 10(2) of the Declaration of Principles on Freedom of Expression in Africa supports this, stating that “the right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.” The 2003 Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression also states that “individual journalists should not be required to be licensed or to register,” and that “there should be no legal restrictions on who may practise journalism.”
i. No substantive conditions should be placed on who may be a journalist. In particular, the regulations should state clearly that there is no minimum level of education required for accreditation as a journalist, with the possible exception of editors.

ii. If any minimum level is specified for editors or other senior journalists, the regulations should consider relevant experience as equivalent to formal qualifications.

iii. The procedural rules for applying for accreditation should be very simple and rapid.

b) Conditions for operation of licensed media houses

As outlined in the previous sections, the Act goes well beyond what is considered normal in a democratic context for licensing and regulation of the media. We believe that there should be only very minimal restrictions on print media applying for or operating under a licence. International law and best practice[^3], suggests that at most, newspapers should be required to inform relevant authorities of their intention to publish. Again, the regulations offer an opportunity to solve some of these concerns. With this in mind, we propose the following:

i. The regulations should require only that the publishers of a newspaper must inform the Director of Information Services of their intention to publish a newspaper, along with specified details such as the name of the media outlet, its ownership structure, address, printer and editor-in-chief.

ii. The regulations should make it clear that the only grounds for rejection of a license would be if the name duplicated another pre-existing newspaper’s name, or if the ownership structure was in breach of the relevant rules relating to this.

iii. The regulations should state clearly that no other restrictions will be put on the operations of licensed media houses.

iv. The regulations should explicitly state that the government shall neither instruct nor compel the media to report or not report on any particular topic.

[^3]: For example, the 2003 Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression stated that “Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided”. Further, Principle VIII(1) of the Declaration of Principles on Freedom of Expression in Africa states that “any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression”.

Procedures for appeals against decisions of the Board

The procedure for journalists appealing against decisions of the Journalists Accreditation Board should be as simple as possible, and should be grounded in the principle of innocence until proven guilty. We propose:

i. In line with Clause 21 (5) and 21 (6), appeals should be directed first to the Minister and subsequently to the High Court of the United Republic of Tanzania.

ii. The regulations should ensure that, procedurally, appeals to the Minister should be rapid and simple.
iii. The Minister should be prohibited from imposing more burdensome regulatory measures on an appellant.

iv. Through the regulations, both the Minister and the High Court should be instructed that a journalist should be expunged from the Roll of Journalists only in the most extreme of circumstances, such as following a conviction for corruption, fraud or violent crime.

v. The regulations should state that in no circumstances shall any journalist be expunged from the Roll on account of the content of their work as a journalist.

vi. The regulations should state that any journalist, accredited or otherwise, appealing against a board decision should not be required to pay a fee or costs for their appeal.

vii. The regulations should state that until an appeal process has been fully concluded, any journalist who has initiated an appeal should be allowed to continue practicing as a journalist.

d) Issuance of punishments

The Act gives power to the Board of Accreditation of Journalists to impose fines on journalists. In order to ensure that this power does not become an undue restriction on freedom of speech, we propose the following:

i. The regulations should instruct the Board to rely on warnings rather than fines for enforcing the rules relating to accreditation.

ii. The regulations should set very low maximum limits on the fines which might be imposed.

iii. The regulations should waive any fines where a practicing journalist has applied for accreditation but has not yet received a formal response to his/her application.

e) Release of information on media houses’ sources of funding

If media houses are to be required to publish accounts of their income, we propose the following:

i. Any media house with an annual turnover below a set level (say TZS 1,000,000,000/-) should be exempt from this requirement.

ii. Media houses with an annual turnover above this amount should be required to publish a set of accounts for each financial year within 6 months of the end of the financial year that lists any funding received above a specified minimum (say TZS 50,000,000/-) from any single source. This should include capital investment, major advertising accounts, government subsidies (in the case of publicly owned media houses, for example), donor funding and any other revenues above the minimum threshold.

f) Conditions for licensing of various publications

The Act goes beyond normal standards of media regulation in a democracy, and arguably beyond the bounds of international law, when it comes to licensing of publications. Some suggestions relating to this issue are covered under point (b) above. In addition, we propose the following, to ensure the Act is not applied to institutions outside the print media:
i. The regulations should state that only publishers of regularly published newspapers and magazines should be required to obtain a license. Publishers of books, academic or professional research reports, booklets, brochures, leaflets, calendars and other similar material should be expressly exempt.

g) Conditions for share ownership of media houses by those who are not citizens of Tanzania

The Act makes no specific reference to restrictions on share ownership of media houses by those who are not citizens of Tanzania. However, a case can be made for some such restrictions, in order to protect Tanzanian media (and Tanzanian democracy) from undue outside interference. However, as the Declaration of Principles on Freedom of Expression in Africa makes clear, limitations of this kind should not be so stringent as to inhibit the development of the media. Foreign funding can bring investment, expertise and other benefits. We therefore propose a study be conducted to assess the potential impact of different levels of foreign ownership on local actors, and suggest that a reasonable level of foreign ownership should be allowed so as to attract funding and skills but capped at a level that will avoid foreign domination. These limits may be quite different for print, radio and television.

As such, we propose the following:

i. No regulations restricting foreign ownership of media houses should be included at this time, until a proper, independent study of the likely impacts of such a move has been conducted.

ii. Media outlets should be required to report annually and after significant changes (say of five percent of the shareholdings) on their ownership structures.

h) Other issues that require regulations for effective implementation.

We propose the following:

i. The Act introduces extensive 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. The regulations should state that the editorial independence of both public and private media must be respected.

ii. The Act uses a broad definition of defamation that is not in line with international law. The regulations should therefore clarify that any statement which is true or which is an opinion cannot be considered defamatory.

iii. Various clauses in the Act define sedition in terms that go well beyond established international law and best practice. The regulations should clarify that sedition charges will only be sought in cases where there is an unambiguous and deliberate attempt to incite or produce imminent violence and where the likely result is to prompt such action.