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The New Press Bills in Tanzania: Implications for National Communication Policy and Press Freedom

by Dr. Gideon Shoo

Abstract

This is a modest critique of the oppressive media laws in Tanzania, arising from the country's still-born socialism, which was adopted at the Arusha Declaration of 1967. The emperor worship syndrome characteristic of the first and, to a large extent, second generation of the autocratic presidents of African states, led them to muzzle the press and trample on their subjects' fundamental human rights like freedoms of expression, association, conscience, assembly and much else, is presented as the historical origin of a feeble press in the continent, including Tanzania.

Taking Tanzania as the unit of analysis, the article argues that such undemocratic tendencies have no place in the modern world. The Tanzanian government is, therefore, invited to review its communication policies to make them more responsive to media development. The starting point should be the repealing of the obsolete media laws, to enable the media to play their adversary roles to the government objectively, authoritatively and independently.

The paper then explores the various media legislations and concludes that the country has a vague communication policy which needs to be changed. In summary, the author philosophises and sympathises with the hackneyed view that there is no absolute freedom, therefore, in a way understands the limitations put in the way of the Tanzanian media by the new press bills.

Nouveaux Projets de Loi en Tanzanie: Implications sur la Planification Nationale de la Communication

Par Dr. Gideon Shoo

Résumé

Il s'agit d'un critique modest des lois tyranniques vis-à-vis des médias en Tanzanie. A la base de celles-ci se trouve la philosophie du socialisme (raté) adopté lors de la Déclaration d'Arusha en 1967. Ce système encourageait l'adoration de l'empereur. De ce fait, la première génération (et même la deuxième) des Chefs d'Etats en Afrique furent adorés et très puissants. Ainsi ils ont pu violer les droits de l'homme dans leur pays dans les domaines de l'expression, de l'association, de la conscience, pour n'en mentionner que quelques-uns. Cet aperçu historique permet de voir l'origine de la faiblesse de la presse, dans nombre de pays du continent africain, dont la Tanzanie.

La communication de Dr. Gideon Shoo se base sur l'analyse de la situation en Tanzanie, pour montrer que les tendances non démocratiques du passé n'avaient plus de place dans le monde contemporain. On incite le gouvernement Tanzanien de passer à la révision des plans nationaux qui regissent la communication, dans le but de promouvoir le développement des médias. Selon cet auteur, il faudrait commencer par le changement des lois désuètes afin de permettre aux médias de jouer leur rôle de façon objective, efficace et indépendante.

La communication de Shoo fait une analyse de diverses législations avant d'en arriver à la conclusion que les lois tanzaniennes étaient floues et qu'elles devraient être changées. En résumé, l'auteur de cette communication expose la nécessité de nouveaux plans de communication tout en reconnaissant le fait que la liberté absolue serait impossible à établir.

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Introduction

This is an attempt to examine the damage to freedom of expression as a result of old and new media laws in Tanzania, and how the new laws influence the country's communication policy.

The paper explores the Arusha Declaration to find out how it affected the media and freedom of expression. It also examines the existing media laws and its impact on the media operations. Various freedoms are critically discussed, and some recommendations offered.

Historical Background

African leaders exercise, consciously or unconsciously, their power through the media. They deny citizens access to the media. Through this alienation and mystification of the media, the powers that be enjoy the liberty of using the media as they wish.

As Cherif Elvadiide Seye put it, "the media ends up being the source of power since it actually confers power. It is, therefore, the place of power...Its word is gospel. The verb is power. What is said abides."

Journalism has never been regarded as a profession in many countries, and, indeed some of them have never established a school of journalism. Whereas the colonial powers used the media to control and tame the 'native' from resisting and rebelling against oppression, the post-independence African leaders used the media to exercise their power and maintain the status quo.

Apart from alienating the majority of the population from the media through illiteracy and compromising the journalists, illiteracy and poverty were used as weapons to tame people's minds.

What we see is a continuation of the colonial style of exploitation of the media to manipulate the people. The difference probably

being that, whereas the colonial regimes were using the media to "civilize the natives", the new African leaders are doing this in the name of "bringing development to the people and maintaining law and order."

It is here that we clearly see Paul Freire's theory of banking method in education. Politicians and policy makers talk and people listen, the latter act on the orders delivered. The repercussion of the above scenario is monopoly of information as a weapon for the exercise of power by the new post-independence governments. No wonder then there exists an appalling level of triviality and mediocrity in journalism in many African countries: "The President has called...", "The minister has urged...", "The Ward Secretary has called...", etc. are the normal, and common clichés one reads or hears in day to day reporting from the media.

When Tanzania attained her independence in 1961, major media institutions were part and parcel of the colonial system. Three years after independence, Tanganyika Broadcasting Company, the biggest instrument of mass mobilisation, was taken over by the new post-independence Government.

This was followed by the Arusha Declaration in 1967, when Ujamaa was adopted as the official social, economic and political system of the young Republic. As a result of this major change in the social, economic and political direction, the media was not left to develop independently. The ruling party, Tanzania African National Union (TANU), was then publishing a paper, each in Kiswahili and English.

Both papers had almost the same mission: to act as pillars and beacons in the struggle for the total liberation of all the oppressed people of the world. It was not accidental, therefore, that these papers, *Uhuru* and *The Nationalist*, were leftist in nature and anti-imperialist.

After the Declaration, what followed was a total take-over of all major media institutions by the Government. These included the *Tanganyika Standard*, a daily newspaper, the biggest printing house in the country, Printpak (Tanzania) Ltd., and even other foreign publishing companies such as Longman, Oxford and

Heinneman as educational publishers were not spared the take-over.

It was after the nationalisation of the media that the Nationalist Government had the profession in its grip and, consequently, enforced some laws in order to ensure full control of the media personnel.

The New Media Bills and how they Affected Freedom of Expression

As pointed out in the introduction, having the mass media organs under control was one of the safest ways of ensuring that one remained in power. The might of the pen, camera and microphone was not only recognized but also perceived as a threat by most African leaders. In some cases, the media phobic leaders developed unfounded fear and hatred towards an independent media.

Tanzania not only inherited a number of laws, most of them draconian, against the media and its personnel, but also instituted new legislation to check and eventually tame the media. Scrutiny shows that the new legislation was uncalled for since the media was owned by either the State or the ruling party.

Although article 18 of the Constitution of the United Republic of Tanzania includes the right to freedom of expression, the same right is limited by inherent exceptions. Thus, amendments to the Constitution were adopted in 1977, but the restrictive media laws were not repealed as was recommended by the Nyalali commission, which was formed to check on the relevance of the existing laws. For the purpose of our discussion, we shall limit the meaning of the term "existing laws" to those laws touching on press freedom. Some of the laws include:

- The Films and Stage Plays Act of 1976
- The Newspapers Act of 1976
- The Tanzania News Agency Act of 1976
- The National Security Act of 1970
- The Broadcasting Services Act of 1993
- The Basic Rights and Duties Enforcement Act of 1994

With these laws, inter alia, are the two basic laws providing for criminal law and procedure:

- The Penal Code
- The Criminal Procedure Act of 1985

The Tanzanian government's attitude towards the media is characterized by the fact that between 1976 and 1992, it did not table any media bill in Parliament. It did, however, rise to the occasion to table a new bill, the Tanzania Broadcasting Services Act of 1993, which was automatically adopted after the introduction of multi-partyism in 1992.

This Act was meant to open the airwaves for all. Unfortunately, the law is very restrictive as to who shall have the right to operate the radio or TV station, and coverage with restrictions to 25 percent of the whole territory. The law also confers extraordinary powers to the minister responsible for information.

The pause between 1976 to 1992 was not accidental. It was a result of satisfaction within the ruling class. The existing laws by then dealt specifically with the print media, which was dominant in the country. There was no need then of instituting new legislation on broadcasting, as this was fully under state control.

The Tanzania Broadcasting Services Act of 1993, like all earlier media laws, contain clauses which infringe on people's rights to freedom of expression guaranteed by article 18 of the Constitution. Theoretically, freedom of expression guarantees two basic rights: the right to express and disseminate opinions in any form, and the right to freely receive information from any source without restriction. The Bill of Rights provides that each and every person has the right to freely express their opinion, search for and receive information and any ideas through any medium irrespective of its origin.

It should be noted, however, that there is no "free freedom". Many countries, Tanzania included, impose restrictions on information that reach the population. In the Constitution, therefore, the Bill of Rights has been subjected to existing laws

of the country. Scholars of jurisprudence and lawyers argue that this is an anomaly since the Constitution is the basic law of the land, and can't be made subject to any subordinate law.

The mushrooming of the media, which was witnessed in Tanzania after the liberalization of the economy and adoption of multi-partyism, scared politicians and civil servants. For the first time since the Arusha Declaration in 1967, 'political and economic big-shots' began witnessing drastic changes in the media. The registrar of newspapers started issuing licenses to publishers, and all of a sudden, a country which was used to having only two daily papers, saw the scene changing from establishment owned media to a free-for-all market.

The mushrooming of media institution titles was accompanied by a diversity of headlines, which did not spare political and economic big-shots, and all of a sudden a monotone orchestra turned out to be stereo. There was no way the establishment couldn't take note. The political and economic big-shots decided to react on behalf of the government, something they had not done over three decades. Not that the laws were not enough to deal with 'naughty' pens, but this was just an overreaction.

In a surprise turn of events in 1993, the *Gazette of the United Republic of Tanzania*, Vol. 74 No. 26, date 25th June 1993, carried a notice which said, "the following bill is hereby published for information of the general public and discussion by them before it is perfected for purposes of submitting to the National Assembly."

The notice was meant to introduce to the public in general and the media in particular the Government's intention to legislate a law for the regulation and control of the media professions through the Tanzania Media Council. According to the Government, the Bill was intended to establish statutory mechanism for safeguarding 'fundamental' rights to information. One is left wondering why there should be another law enacted to do what the Constitution has already guaranteed in article 18!

The notice further said: "in order for the right to information to be meaningfully enjoyed, the media, for the collection,

dissemination and circulation of information, should be so organised and regulated as to be genuinely free and publicly responsible.

In Tanzania, like in many other African and non-African countries, doctors, lawyers and even engineers have such statutory councils. With this in mind, it can be understood why Tanzanian journalists, supported by the public, reject the idea of a Media Council.

The major problem was the enormous powers conferred upon the Minister responsible for information in that particular Bill. Instead of giving the Council powers to act and administer the professional body, the Bill empowered the Minister to make decisions on behalf of the Council, pointing out clearly that the Bill was meant to control rather than regulate information.

On the magnitude of the powers of the Council in relation to the media, the profession and the professionals the Bill said:

A person shall not be able to lawfully pursue a media profession in Tanzania unless he is properly qualified and then registered as such by the Council. It is intended that the Council shall be responsible for overseeing the regulation and control of the media professions, and be answerable for it to the public.

Taking into account the composition of the Council, journalists wondered how such a body, made up of non-professionals, including politicians appointed by the minister, who, according to the Bill shall have powers to make decisions unilaterally, could "proclaim a Code of Ethical Principles for guiding the exercise by persons of the media profession."

The Bill for the Media Profession Regulation Act of 1993 had two prongs. One is the Media Council which we have partly discussed and second is licensing or registration of journalists and other media professionals.

According to the Bill, the minister responsible for information shall have the powers to suspend, reprimand or order to be sued by the council, any journalist or media practitioner who violates the Code of Ethical Principles. The minister shall also have

powers to cancel registration and automatically revoke all licenses issued to any journalist, media practitioner or institution if convinced that the culprit has committed an offense as far as the Code of Ethical Principles is concerned.

The above Bill, however, was not tabled in Parliament though the Government says that it was shelving it to give a chance to media practitioners to form an alternative media council.

The Existing Laws and Freedom of the Press

The existing media laws are restrictive and oppressive to media activities in Tanzania. The draconian laws, instil fear in the media practitioners; and compels them to self-censorship.

For instance, the National Security Act of 1970 says that it is an offense to "communicate classified matter to an unauthorized person, or to approach, inspect or enter a protected place for any purpose prejudicial to the safety or interests of the United Republic of Tanzania."

It is disturbing to note that there is no law stipulating what classified matter is and what protected areas are. In fact, according to the existing Civil Service Standing Orders, there is no clear demarcation as to what constitutes a classified document and as a result, even a letter of transfer from one department to another can be classified material.

The above Act of Parliament is widely used by politicians and civil servants alike, to bar journalists and other media practitioners from accessing information. It is actually used to "starve the public of information."

One of the restricted areas in Dar es Salaam, for example, is a stretch from Selander Bridge Police Station to the Russian embassy along Ali Hassan road. No photographing is allowed in that area despite the fact that one can take photographs from many corners without necessarily going to the bridge. No one has ever bothered to give an explanation why the area is restricted. Journalists have tried unsuccessfully to find official documents on the issue.

All media laws in Tanzania limit the freedom of the press. They do so by, among other means, classifying certain types of conduct by journalists and other media personnel as criminal. Once a journalists contravenes these prohibitions, he will have committed a crime against the State, and "the police have powers to arrest the person without warrant and detain him. They can also search and seize anything relating to the offense."

The Newspapers Act of 1976 defines newspapers as, "any paper 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 or published in Tanganyika periodically or in parts or numbers."

Not only is this definition wide, but also parallel in that the law gives enormous powers to the Minister responsible for information, "where the minister is of the opinion that it is in the public interest or in the interest of peace and good order so to do, he may, by order in the gazette, direct that the newspaper named in the order shall cease publication as from the date...specified in the order." Who among us doesn't know how such sweeping powers are used to intimidate the media? The above listed Acts, however, have something in common. They are all provisions from the Criminal Procedure Act of 1985 meant to control the media.

In the Newspapers Act of 1976, there is a section which talks of "Offences Against the Republic." It is in this section that part of the Criminal Procedure Act is envisaged. The same Act of Parliament gives the President powers to prohibit importation of publication if he is of the opinion that its importation would be contrary to the public interest. It is also in this section of the Act that seditious intention is defined and seditious offences are listed.

Conclusion

As pointed out earlier, there is no "free freedom". Whereas some countries impose restrictions on information that should freely reach the population, styles of restriction differ. Tanzania uses

restrictive laws that are becoming dormant with time.

Restriction on press freedom is injurious to the people. It is important that people have free access to information. On the other hand, unlimited press freedom may even endanger the security of a country. This is a debatable issue leading to several theories propounded on the manner of regulating or controlling press freedom.

For the purpose of this discussion, two of these theories are of interest to us: The Absolutist Theory which says that the press should not be restricted in any way, and the Balancing Theory which says that freedom of the press should balance freedom of expression and national interests.

In the case of Tanzania, the Government, as we have seen, is in favour of the second theory, and the most effective instrument for such restriction, inter alia, is the use of criminal law commonly enforced by the police and courts.

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