

LONDA

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

TANZANIA



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Tanzania



▶ Executive Summary

This report presents the situation of digital rights and inclusion in Tanzania. Although the Constitution of the United Republic of Tanzania, 1977, the Access to Information Act, 2016, the Media Services Act, 2016 and the Electronic and Postal Communications Act, 2010 protect the digital rights to privacy and freedom of expression, there are certain problematic provisions in the very same laws that affect the digital rights. These provisions have been used by Government authorities to curtail the enjoyment of digital rights particularly free speech, media freedoms and the right to privacy.

Access to the internet has been tampered with by the Government's attempts to reduce speed and block access to certain websites and applications such as adult content websites and Mange Kimambi App to mention, to mention a few. These websites and applications cannot be accessed in Tanzania except through VPNs.

The enactment of the Personal Data Protection legislation in 2022 is a milestone achievement in protecting personal data and the right to privacy. However, the ongoing collection of biometric information in the production of national Digital IDs and electronic passports raises concerns about data governance. This report recommends the amendment of the Constitution and other legislation to recognise and protect digital rights in a broader manner and immediately operationalise the data protection legislation.



Introduction

Tanzania is a united republic made up of Mainland Tanzania and Zanzibar. The current statistics show that there is an increased digital citizenry in Tanzania. According to the current statistics released by Tanzania Communications Regulatory Authority (TCRA), the number of internet users in Tanzania is 31.12 million.¹ The foregoing numbers show that almost half of the population of Tanzania is connected to the digital space or has access to internet services.

To increase its digital presence and transform its economy into a digital one, Tanzania is implementing a Development Vision 2025 (TDV) and Five-Year Development Plan 2021-2025. These strategies seek to expand networks of high-speed internet connection in both rural and urban areas.² Furthermore, Tanzania is currently implementing the Digital Tanzania Project (DTP) which is funded by the World Bank.³ Like the foregoing strategies, this too, seeks to increase access to high-quality broadband internet services for government, businesses, and citizens, and improve the government's capacity to deliver digital public services. This project also seeks to make Tanzania a more attractive and competitive place for digital investment and innovation and ensure that the benefits of digital technology are reaching all citizens and helping lay the groundwork for the growth of the digital economy.

As this report will highlight in the upcoming sections, Tanzania has embarked on several projects which have had an impact on the expression of digital rights. These include but are not limited to the introduction of e-government and e-transactions, biometric digital identity, digital services tax, and postcodes registration projects. Technically, all these projects are in one way or another impacting the enjoyment of digital rights in Tanzania.

Tanzania has no specific legislation on digital rights although these rights are by necessary implication recognised and protected by the Constitution and other relevant legislation. It should be noted that rights to privacy and freedom of expression are to some extent guaranteed by the Constitution of the United Republic of Tanzania 1977 (the Constitution).

The right to privacy is guaranteed under article 16 and freedom of expression is guaranteed under article 18 of the Constitution. Similarly, these rights are also provided under the Access to Information Act, 2016 (the ATI), the Media Services Act, 2016 (the MSA), the Cybercrimes Act, 2015 and the Electronic and Postal Communications Act, 2010 (the EPOCA). On the other hand, these laws are also highly criticised as being draconian and abrogating human rights. It is also worth noting that Tanzania has recently enacted a Personal Data Protection Act, making it the

¹ The Citizen, 'TCRA: Digital economy growth on track as internet use expands', available at <https://www.thecitizen.co.tz/tanzania/news/national/tcra-digital-economy-growth-on-track-as-internet-use-expands-3998392> (accessed on January 28, 2023).

² See Tanzania Five Year Development Plan, 2021-2025. The plan is available at <https://www.tro.go.tz > 2021/06 > FYDP-III-English> (accessed on December 27, 2022).

³ World Bank 'Tanzania: World Bank Supports Expanded Access to Opportunities and Services, Especially for Women and Youth', available at <https://www.worldbank.org/en/news/press-release/2021/05/27/tanzania-world-bank-supports-expanded-access-to-opportunities-and-services-especially-for-women-and-youth>, (accessed on December 27, 2022).

fourth East African Community nation to have such kind of legislation.⁴ This is a milestone achievement in the protection of digital rights.

INTERNET FREEDOM

The internet has emerged as a new medium/channel for individuals to express their views and opinions. It provides different avenues of freedom of expression that allow people to share their thoughts. However, several issues cloud the freedom people may have in accessing or using the internet. These issues are generally grouped into three categories: issues relating to government control of internet freedom; issues relating to



government surveillance of internet activities; and lastly, issues relating to government

activism/propaganda in shaping the content of the internet to suit the Government's interests.

INTERNET ACCESS AND DISRUPTIONS

There are about 31.12 million persons who can access the internet in Tanzania.⁵ This is almost half of the population of Tanzania which currently stands at 61,741,120 people.⁶ In a bid to increase access to the internet for a large number of people, the Government removed VAT from importation of smart phones to ensure that smartphones are sold at a cheaper price and therefore many people can afford to purchase them.⁷ Additionally, the government has taken a commendable move of amending the Electronic and Postal Communications (Licensing) Regulations, 2018 to remove the requirement for a TCRA licence to sell mobile phones.⁸ This in turn facilitates mobile phone trading and consequently increased access to the internet.

Apart from those commendable moves, there have also been attempts by the Government to disrupt internet access. There are reported incidents of internet disruptions or attempts by the government to reduce internet speed. These have been particularly reported during the election period⁹.

In recent days, the Government has blocked access to some websites, especially those which offer adult content (pornography). These websites cannot be accessed in Tanzania. Although this move can be justified on the grounds of morality yet the same limits unreasonably the right to access information and freedom of expression by limiting the access to such content.

In the same line, the Government has also blocked access to some applications such as an

4 Kenya, Uganda, and Rwanda enacted data protection legislation before Tanzania.

5 The Citizen, 'TCRA: Digital economy growth on track as internet use expands', available at <https://www.thecitizen.co.tz/tanzania/news/national/tcra-digital-economy-growth-on-track-as-internet-use-expands-3998392> (accessed on January 28, 2023).

6 Official Census Report, 2022. Read more at: <https://www.tanzaniainvest.com/economy/population-reaches-61-million> and follow us on www.twitter.com/tanzaniainvest, (accessed on December 28, 2022).

7 Vatupdate 'Tanzania to remove VAT on smartphones to boost access to internet', available at <https://www.vatupdate.com/2021/06/17/tanzania-to-remove-vat-on-smartphones-to-boost-access-to-internet/>, (accessed on December 21, 2022).

8 See the amendment of the Licensing Regulations of 2022, particularly the third schedule thereto. The amendments are available at TCRA Website (www.tcra.go.tz).

9 The incidents were mostly reported during the 2020 general elections and 2022 by-elections in constituencies.

Mange Kimambi, a notable government critic living in the United States. All these websites and applications can only be accessed by using a Virtual Private Network (VPN). Ironically, the use or ownership of a computer program such as VPN to circumvent content prohibited by the Government is a criminal offence in Tanzania under the Cybercrime Act.¹⁰

FREE SPEECH AND MEDIA FREEDOMS

Although Article 18 of the Constitution and Section 7(1) of the Media Services Act, 2016 guarantee freedom of speech and media freedom respectively, there are other provisions of the law which encroach on these freedoms.

The Government has been using provisions of the Media Services Act, 2016 and the Electronic and Postal Communications (Online Content) Regulations, 2020 to suspend licenses and punish numerous media organisations, as well as arrest intermediaries. The Media Services Act, 2016 grants unfettered powers to the Minister to suspend or revoke the licence of media houses.¹¹ Using the said Act, several newspapers have been suspended or banned indefinitely. This restricts freedom of speech and media freedom in particular. Also, the Act imposes a requirement of journalists' accreditation, it provides for a seditious offence and criminal defamation which are considered to affect media freedoms.¹²

Freedom of expression online has also been curtailed by the arrest of journalists and other online government critics. For example, on April 21, 2022, advocate Peter Madeleka, an online activist was arrested and detained by police after posting in his Twitter account about a conspiracy to kill him by the immigration officers.¹³ Madeleka has been using his Twitter account to criticise immigration officers on

corruption and misuse of the office.

In another incident, a Zanzibar-based journalist, Yassir Mkubwa, was arrested on June 20, 2022 and detained by the police after interviewing the ruling party cadre, Baraka Shamte, who criticised the President of Zanzibar. In the said interview, Shamte stated that he does not think that President Mwinyi deserves a second term, citing his "failures to display good qualities as a leader" as a reason.¹⁴

Online Content Regulations have also been used to suspend online media and to reinforce the Government's censorship powers. The regulation contains a broad list of the prohibited content and provisions for takedown notifications, criminal defamation and requirement to obtain licence.¹⁵ All these are said to affect the freedom of these online media to share information and their contents. These regulations have been notoriously used by the Government to prosecute persons who owned YouTube channels without procuring a licence or publishing content online which the Government has been opposing. The enforcement of the Media Services Act and Online Content Regulations has negatively impacted the enjoyment of free speech and media freedoms.

PRIVACY AND SURVEILLANCE

On one hand, the right to privacy is provided under article 16 of the Constitution. The same right is to some extent reinforced under section 97 of the Electronic and Postal Communications Act, 2010 and the Personal Data Protection Act, 2022 which entered into force on December 2, 2022.¹⁶

On the other hand, there are various pieces of legislation which are used by the Government to restrict or abrogate the right to privacy. These

¹⁰ Section 6 (1)(b) of the Cybercrime Act, 2015 provides to that effect.

¹¹ CPJ, 'Tanzanian government revokes license of Tanzania Daima newspaper', available at <https://cpj.org/2020/06/tanzanian-government-revokes-license-of-tanzania-daima-newspaper/> (accessed on December 27, 2022).

¹² Sections 38(3), 58 and 59 of the Media Services Act, 2016.

¹³ The Chanzo Initiative, 'Police in Dar arrest activist Peter Madeleka over unspecified charges', available at <https://thechanzo.com/2022/04/21/the-chanzo-morning-briefing-april-21-2022/> (accessed on January 27, 2023).

¹⁴ The Chanzo Initiative, 'Journalist arraigned in Zanzibar over cybercrime charges', available at <https://thechanzo.com/2022/06/22/the-chanzo-morning-briefing-june-22-2022/> (accessed on January 23, 2023).

¹⁵ These are provided under regulations 9(g), 11(3) & (4), 15, 16(1), paragraphs 10 and 2(b) of the schedule to the Electronic and Postal Communications (Online Content) Regulations, 2020 as amended.

¹⁶ See Government Notice No.45 of December 2, 2022.

are the Cybercrimes Act, 2015, the Electronic and Postal Communications Act, 2010 and the Electronic and Postal Communications (Online Content) Regulations, 2020. All these laws provide for information disclosure procedures which have no adequate safeguard against possible abuse by the law enforcement agencies.

The lack of adequate safeguard puts the right to privacy in jeopardy. For instance, the Cybercrime Act empowers police officers to demand disclosure of information from service providers without prescribing the procedure to be followed or safeguards that may protect against possible abuse.

The Online Content regulations abrogate the right to privacy by requiring the online content provider to use tools that identify the source of the content. This provision hinders journalism and whistleblowing because people cannot guarantee their sources will be protected. Also, the Regulations prohibit use or distribution of tools that allow people to access prohibited content, meaning that virtual private networks (VPNs) are effectively banned, restricting people's capacity to stay anonymous online. These requirements do not align with the basic tenets of the rights to privacy and anonymity.

Generally, surveillance is not permitted in Tanzania except under the circumstances provided by the Prevention of Terrorism Act, 2002 and the Tanzania Intelligence and Security Services Act, 1996. However, there have been reported incidents of surveillance in contravention of these laws which harms the enjoyment of digital rights. It has been alleged that the Tanzanian State has deployed Pegasus phishing technology from Israel to conduct surveillance and hack into the mobile phones of targeted individuals.¹⁷

This appears to have been the case when it was reported that several public officials had



their phones tapped and voice recordings of the conversation between former Ministers Nape Nauye, January Makamba and former ruling party Secretary General Abdulrahman Kinana were leaked to the public.¹⁸

DATA GOVERNANCE

For several years, the Government was reluctant to enact data protection legislation despite a constant public call for the same. However, on November 1, 2022, the Personal Data Protection Bill was passed by Parliament. The Bill was signed into law by the President on November 27, 2022.¹⁹ The Act came into force on December 2, 2022 via a Government Notice No.45 of 2022.

While the Data Protection Act offers protection when it comes to safeguarding the privacy of personal data, it nonetheless raises serious concerns in some key areas. The notable issues are the independence and impartiality of the Data Protection Commission whose members

¹⁷ Stewart, J. Revealed: Magufuli used Israel hi-tech Pegasus to hack journalists, critics and opponents' available at <https://sautikubwa.org/revealed-magufuli-used-israeli-hitech-pegasus-to-hack-journalists-critics-opponents/> (accessed on December 20, 2022).

¹⁸ The Citizen, 'The letter that is rocking CCM', available at <https://www.thecitizen.co.tz/tanzania/news/national/the-letter-that-is-rocking-ccm-2687412>, (accessed on December 18, 2022).

¹⁹ Information received from the Government Printer.

are handpicked by the President. Another concern is on the data transfer, the data subject has not been accorded the power of consent to bodies that collect, process, store, or use personal data outside Tanzania's borders. This means that their data may be prone to misuse. Since the legislation has been in force for a few days, the practicalities of its implementation will be better assessed in data governance. This is because, effective operation of the Personal Data Protection Act depends on regulations which are yet to be made.²⁰

Digital IDs as a part of the data governance regime are governed by the Registration and Identification of Persons Act, 1986. This Act is administered by the National Identification Authority (NIDA). Through this Act, NIDA is empowered to collect among other things biometric information of citizens. Ordinarily, fingerprints are taken when processing IDs. Again, fingerprints are taken when processing travel passports under the Passports and Travel Documents Act, 2002. Notably, the information which is captured by NIDA is shared to other service providers such as telecommunications companies and financial institutions.

Under the Electronic and Postal Communications (SIM cards Registration) Regulations, 2020, individuals must register their SIM cards using biometric information. Biometric information falls under the category of sensitive personal data. Sadly, the sensitive personal data is captured and shared without a proper legal framework for the protection of personal data.²¹ In other words, the data are shared without proper safeguards to guarantee the right to privacy and protection of the personal data as required by international standards.

UNIVERSAL SERVICE FUND

The Universal Service Fund was established and governed by the Universal Communications

Services Access Fund Act, 2006 (the UCSAF). In Tanzania, the fund is known as UCSAF. The fund started operations on July 1, 2009. The Universal Service fund is available in Tanzania and has been used to subsidise the construction of communications infrastructure in areas which are less attractive commercially.

For instance, in 2022, the fund constructed 88



communication centres in regions of Mtwara, Lindi, Tabora, Rukwa, Geita, Dodoma, Iringa, Njombe, Ruvuma, Mbeya, Tanga, Kilimanjaro, Arusha, Manyara, Mara, Kigoma, Singida, Morogoro, Pwani, Kusini Pemba, and Kaskazini Pemba.²² Furthermore, UCSAF promotes socio-economic development of the rural and urban underserved areas through ICT interventions to ensure the availability of communication services and to bridge the digital divide between rural populations and urban populations.²³ Some of the notable tasks that UCSAF has been

20 See s.64 of the Personal Data Protection Act, 2022. Note that the Act is only available in Swahili version.

21 The Personal Data Protection Act came into force on December 2, 2022. Institutions and regulations necessary for the effective operation of the Act are yet to be established.

22 The Ministry of Information and Communication Technology Budgetary Speech, 2022.

23 UCSAF Press release, available at <https://www.ucsaf.go.tz/press-releases/ucsaf-implements-digital-projects-that-promote-quality-of-life-for-tanzanians> (accessed on December 27, 2022).

doing to bridge the digital divide is providing ICT learning equipment to public schools and connecting them to the internet, and upgrading the rural communications towers from 2G to 3G to facilitate internet access.²⁴

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

Tanzania lacks a specific policy or legislation on Artificial Intelligence (AI). Nevertheless, there are laws and regulations which regulate in one aspect or another, the applications of AI. These are the Cybercrime Act, 2015, the Electronic Transactions Act, 2015 and the Judicature and Application of Laws (Remote Proceedings and Electronic Recording), 2021. The Judiciary in Tanzania has been using the AI system for transcribing and translating the Court's proceedings.²⁵ It has also installed ICT facilities for online courts and an e-filing system. It is a pioneer of the AI system in Tanzania.

The Government has mainstreamed ICT in most of its development action plans and strategies. For instance, the National Strategy for Growth and Reduction of Poverty (MKUKUTA), Tanzania's Mini Tiger Plan, and the Tanzania long Term Perspective Plan 2011/12-2025/26, emphasise the need to increase application of technology in accelerating productivity.²⁶

In July 2013, the Government implemented the Tanzania e-government Strategy which seeks to increase the Government's Digital Presence and Interaction in ICT. Through this strategy the e-Government Authority has been established and most of the Government transactions are currently being done online, including a centralised online payment gateway known as Government Electronic Payment Gateway (GePG).

Tanzania Development Vision 2025 (TDV) and Five-Year Development Plan 2021-2025 seek, among other things, to expand networks

of high-speed internet connection in both rural and urban areas. The Plan focuses on technology, and innovation, with a specific emphasis on advanced and modern information and communication technology (ICT) as an enabling tool to reach the intended goal. This will transform the economy to a digital one and keep pace with the rest of the world.

24 UCSAF Press release, available at <https://www.ucsaf.go.tz/press-releases/ucsaf-implements-digital-projects-that-promote-quality-of-life-for-tanzanians> (accessed on December 27, 2022).

25 Almwave 'Almwave S p A : Artificial Intelligence in support of the Tanzanian justice system' <https://www.marketscreener.com/quote/stock/ALMAWAVE-S-P-A-120091815/news/Almwave-S-p-A-Artificial-Intelligence-in-support-of-the-Tanzanian-justice-system-40705369/> (accessed on January 27, 2023).

26 Tanzania Long Term Perspective Plan 2011/12-2025/26, available at <https://effectivecooperation.org/content/tanzania-national-development-plan-2021>, (accessed on December 27, 2022).

Conclusion and Recommendations

Tanzania is rapidly increasing its digital presence through the implementation of various projects that seek to transform its economy to a digital one. This is evident in the increasing number of internet users, adoption of e-government and implementation of the Universal Communications Services Access Fund (UCSAF) to bridge the digital divide between the rural and urban populations. However, there is no specific legislation on digital rights in Tanzania, even though digital rights are recognised and protected by the Constitution of the United Republic of Tanzania, 1977, the Access to Information Act, 2016, the Media Services Act, 2016, and the Electronic and Postal Communications Act, 2010. Digital rights such as the right to privacy and freedom of expression are guaranteed under articles 16 and 18 of the Constitution respectively.

The Government of Tanzania has taken some positive steps to increase access to the internet. Some of the steps include the removal of VAT from the importation of smartphones and the abolition of the Tanzania Communication Regulatory Authority's licence for selling mobile phones. These have enabled the ease of access to ICT equipment and consequently increase access to the internet. However, on the other hand, the government has restricted access to the internet by reducing internet speeds, especially during election periods, restricting access to some websites and applications unless with the use of VPNs.

Although the Constitution and Media Services Act, 2016 provides for free speech and media freedom, the same has been curtailed by other provisions of the law. The government has been using laws such as the Media Services Act, 2016 and Electronic and Postal Communications (Online Content) Regulations, 2020 to suspend or revoke licences of the media houses, restrict freedom of expression and prosecute the Government critics and intermediaries.

Unsafeguarded procedures for disclosure of information provided under the Cybercrime Act, 2015 and Online Content Regulations, 2020 curtail the right to privacy and freedom of expression. Tanzania has passed Personal Data Protection legislation to govern the collection, retention and use of personal data. Although the data protection legislation is not yet in operation, other authorities such as NIDA and Immigration Department have been collecting biometric information for the purpose of issuing digital IDs and electronic passports. These sensitive personal data are also shared with telecommunications companies while there are no proper legal safeguards to ensure the privacy of the data subjects and the protection of personal data.

Against the foregoing findings, this report recommends the following:

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
<ul style="list-style-type: none"> Amend the Media Services Act, 2016, the Cybercrime Act, 2015 and the Electronic and Postal Communications (Online Content) 	<ul style="list-style-type: none"> Work with the government to ensuring internet access, especially to marginalised communities. Devise projects 	<ul style="list-style-type: none"> Advocate for the amendment of the laws and inclusion of digital rights. Conduct awareness programs and training on digital rights and

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
<p>Regulations, 2020 to address all draconian provisions which curtail the right to privacy and freedom of expression. These are section 32 of the Cybercrimes Act, 2015, section 38(3), 58 and 59 of the Media Services Act, 2016 and regulations 9(g), 11(3) & (4), 15 and 16 (1) of the Electronic and Postal Communications (Online Content) Regulations, 2020.</p> <ul style="list-style-type: none"> • Without delay, make necessary regulations for effective operation of the Personal Data Protection Act, 2022. • Amend the Constitution to recognise specifically digital rights and increase the online protection of these rights. 	<p>which may improve or increase access to the internet and thereby help the community to tap the potentials of the digital economy.</p>	<p>digital citizenry.</p> <ul style="list-style-type: none"> • Conduct strategic litigation on cases of digital rights violations.



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