

By Daniel Sambereya

STAKEHOLDERS have raised alarm that freedom of expression was currently very limited in Tanzania, and becoming more restricted on a daily basis. The limitation is caused by the enacted laws as well as practice. These laws need to be urgently reviewed for compliance with the Constitution and international standards. Moreover, proper guidance should be provided to the relevant authorities to ensure good administration and proper governance.

Presenting her paper on freedom of expression at a Breakfast Debate on "Taking off to the Inclusive Society: Freedom of Expression in Tanzania," Director of Advocacy and Reforms from Legal and Human Rights Centre (LHRC) Anna Henga said that freedom of expression was a fundamental right in any democratic state.

"This is one of the rights, which is provided for under a number of human rights instruments at the international, regional levels. At the national level, the same is provided for in both the Constitution and other legislations," she explained.

Henga said that although Tanzania was a signatory to various international obligations and constitutional guarantees, however, a number of recent enacted laws were contradicting with the

# Stakeholders demand scrapping of laws flouting freedom of expression



Constitution in 1984. This does not mean human rights including freedom of expression were not provided previously, it means that before 1984 it was difficult for an individual whose rights were violated to demand such rights in a court of law because they were not provided in the Constitution. However, after that the rights could be provided effective in 1987 and people had the right then to demand them in a court of law.

Apart from having the right for the freedom of expression in the constitution, it is difficult to say there was ample freedom of expression under the prevailing situation, this is because there were other laws which in some way or the other denied that right. Compared to global situation, Tanzania has not attained the internationally accepted standards of freedom of expression.

## Legal challenges

As pointed out above these laws have clauses that suppress right to information. For example the National Security Act, 1970 has clauses with very harsh sentences to offences for reporting on issues classified as top secret.

tees, however, a number of recent enacted laws were contradicting with the right of freedom of expression.

She mentioned the recent enacted laws that were in conflict to the freedom of expression as The Cybercrimes Act, No. 14 of 2015; Media Services Act, No. 13 of 2016; Communications Regulatory Authority Act, No. 12 of 2003; The Statistics Act, No. 2015; and the Access to Information Act, No. 6 of 2016.

Henga further realized that there were numerous international instruments which provided for the right to receive and give information. Tanzania being a signatory to these international instruments has an obligation to comply with them.

Freedom of expression as one of the human rights in the Tanzanian Constitution of 1977 as amended, specifically under articles 18 and 20.

Article 18, states: "Every person has the freedom of opinion and expression of his ideas; has the right to seek, receive and disseminate information regardless of national boundaries. Likewise the Constitution of Zanzibar (1984) under article 18(4), states: "Without prejudice to the relevant laws of the land, every person has the right to freedom of opinion and expression."

Commenting on the Cybercrimes Act, No. 14 of 2015, she said that the Bill to enact this law was not made public until 29th March, 2015 where it was tabled before the Assembly under Certificate of Urgency without involvement of stakeholders.

The Bill was discussed and passed on 31st March, 2015, by only 86 MPs including Ministers despite public outcry that the discussion should be postponed to allow public and stakeholders involvement in the analysis of the bills

contents.

According to her, the Cybercrimes Act, 2015, was enacted to criminalize offences related to computer systems and information communication technologies and for investigation, collection and use of electronic evidence and related matters.

"The law creates a series of offences which affects whistleblowers. These offences are of strict liability nature where it is very difficult for the prosecution to prove the intentions of the accused. The offences crafted to affect whistleblowing are provided under sections 5(1), 6 (1), 7(1) (e) and (f), 8 (1), 9, 10 (1), 16, 20 (1), and 24 (2) (a)", she explained.

Another defect of the law is that section 31 grants broad search and seizure powers to police officers. At a minimum, this should be restricted to cases where waiting to obtain a search warrant from an authorised judicial officer.

### Media Services Act, No.13 of 2016

This Law introduces statutory media regulation which was resisted by media practitioners in the early 1990s. The Law also seeks to license journalists in terms of admission into the profession and introduces draconian penalties for offenders including penalty and jail terms that do not have stated limits.

For Instance, Sections 54 and 55 gives the Minister the power to prohibit the publication of a formation for the reasons of public safety.

The law is silent on what amount to the public safety, powers which may be used to interfere with the freedom of expression.



**One of the participants to the breakfast debate on Freedom of expression that was organised by Policy Forum last Friday in Dar es Salaam. Seated (left) is the National ACT Chairman, Zito Kabwe. Photo: File photo**

Lack of specific provision which provided for the protection of the journalists under the Media service Act also hinders the freedom of expression as journalists will have to live in fear of reporting some issues for the fear of their security. The law provides draconian provisions. For example, Section 36.

### Communication Regulatory Authority Act, No.12 Of 2003

The Communication Regulatory Authority Act, 2003 was enacted for the purpose of regulation of telecommunications, broadcasting, and postal services among other things.

Under section 6 of this Act among other functions of the Authority is to issue, renew and cancel license. This has created fear to the bodies that are required to obtain such licenses from the authority and resulted to the interference with the freedom of expression.

Meanwhile, Henga has recommended for the amendment of laws as per the highlighted sections, the repeal of all laws, which deny the right to access to information and freedom of expression; and the public in general should be empowered and enhanced in having a culture of seeking and giving timely and relevant information and to have freedom of speech.

For his part, Senior Programme Officer with the Media Council

of Tanzania, Paul Malimbo, said that freedom of expression is one of the fundamental rights that should be enjoyed by everybody. It is the main pillar of justice and democratic freedom and human dignity."

At its first meeting in 1946 before the passing of resolutions and human rights declarations, the UN General Assembly passed the 59(f) saying, "The freedom of information is a fundamental human right to every person...it is the pillar of all kinds of rights which form the foundation of the United Nations."

"Freedom of Expression is vital in enabling democracy to function and involve the masses in decision making, adding people cannot exercise their right to vote freely or make decisions if they do not have access to information and various ideas and they cannot express their opinions freely," she explained.

Freedom of expression is not only important for human dignity but also in participating in various activities, be responsible in practicing democracy.

He further noted that "Freedom of expression violation normally goes hand in hand with other violations, particularly media freedom, and freedom of assembly to meet with other people. Moreover, that is a more dangerous right to implement."

Malimbo further detailed that in all history, individuals and

various communities have found themselves under sufferings because freedom of expression gives an individual the right to express his or her disapproval of the existing situation and the wish to make changes.

So, this is one of the most threatened rights whereby governments the world over want to suppress.

Freedom of Expression, the right to collect, and distribute information without setting boundaries.

According to Malimbo, in order to illustrate clause 19 of the civil and political rights, the Human Rights Committee has clarified several issues that are vital for UN member-states to consider.

The Committee describes several issues including the role of the media institutions. It says a free media is a major pillar of democracy. (It constitutes one of the cornerstones in a democratic society).

The Committee recognizes the role of the media in receiving and imparting information to the people and it says: regarding conditions that may be stated by law on freedom of expression and opinion, the committee says such conditions must comply to the necessity and proportionality.

### Current status of Freedom of Expression in Tanzania

History shows that human rights were incorporated in the

The bad thing about these laws is that they are too general and don't comply to international standards.

The other law is the Media Services Act of 2016 which has sections denying people freedom of expression, denying people to collect, process and disseminate information except when that person has permission and answers to the prescriptions or conditions laid down in the regulations.

This limits and denies people the right to have information, process and disseminate it as provided in international conventions. Also this law deals with sedition and criminal defamation which both suppresses freedom of expression.

The Access to Information Act denies non-Tanzanians the right to information from public and private institutions.

This is contrary to the Constitution which stipulates that everyone has the right to information and for that reason it is not exclusive to Tanzanian citizens alone. This right is not for citizens alone. He also insisted that the Cyber Crime Act of 2015 has clauses that deny people the right to freedom of expression and has clauses that limit the dissemination of information.

For instance several cases have been opened against people who have given information through the internet and other social media which the government regards as seditions.