

TANZANIA MEDIA WOMEN'S ASSOCIATION



FREEDOM OF EXPRESSION IN ZANZIBAR: LEGAL REVIEW

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FREEDOM OF EXPRESSION IN ZANZIBAR: LEGAL REVIEW

1.0 Introduction

Generally, freedom of expression connotes the liberty of every person to openly discuss issues, hold opinions and impart ideas without restrictions, restraints or fear of punishment. It is undoubtedly, a right to be enjoyed by every person who is not under any oppression. Freedom of expression and information are pillars of a healthy democratic society and for social and economic growth, allowing for the free flow of ideas necessary for innovation and bolstering accountability and transparency. It is a foundational right, a key to the protection to all human rights and fundamental to human dignity. In every human society, Zanzibar not being an exception, the desire and freedom of an individual to hold an opinion and share the same with a listener of his choice is a fundamental one. This is because a person has the right to have a perspective of the world, the circumstances around him and the people he interacts with.

This right has a dual dimension namely individual and collective form of freedom of expression. An individual dimension consists of the right of each person to express his or her own thoughts, ideas and information. A collective dimension consists of society's right to obtain and receive any information, to know the thoughts, ideas and information of others, and to be well-informed.

Zanzibar has put in place regulatory framework to regulate the protection of human rights including the right to freedom of expression. The Constitution of Zanzibar of 1984 provides for the right to freedom of expression whose enjoyment depends on other laws. In that regard, Zanzibar has enacted legislation to regulate media related rights.

2.0 Objectives

The study has following objectives:

- a) To review the Registration of News Agent, Newspapers and Books Act, 1988, the Zanzibar Broadcasting Commission Act, 1997 and the Cyber Crimes Act, 2015;
- b) To high-light weaknesses and gaps of those laws;
- c) Propose upgrading of the Acts in relation to freedom of expression.

3.0 Methodology

This study largely depended on the documentary review. Constitutions and various laws were reviewed to obtain relevant information on the subject. The Constitution of Zanzibar, of 1984, the Constitution of the United Republic of Tanzania of 1977 and the Constitution of Ghana of 1992 were reviewed to see constitutional safeguard and protection of human rights and in

particular the right to freedom of expression. International Human Rights instruments were analyzed to get overview of international standards relating to the right to freedom of expression. These Instruments include treaties, resolutions and declarations regional and international. Local laws relating to media were critically analyzed including the Registration of News Agent, Newspapers and Books Act, 1988, the Zanzibar Broadcasting Commission Act, 1997 and the Cyber Crimes Act, 2015. The study also had access to different books, articles, cases and reports.

4.0 International Legal Framework

The protection of the right to freedom of expression was firstly guaranteed by individual states even before the formation of the United Nations Organizations (UNO) and other regional organizations. The English Bill of Rights of 1215 recognized freedom of expression followed by the United States Bill of rights that was incorporated into the US Constitution of 1791 and the French Declaration of 1789. The formation of the UNO in 1945 which one of its objectives was to promote human rights, brought commendable changes in the protection of the right to freedom of expression. In 1946, the UN general Assembly declared that:

*Freedom of Expression is a fundamental human right and the touchstone of all freedoms to which the UN is consecrated.*¹

In 1948 the right to freedom of expression was incorporated in the Universal Declaration of Human Rights of 1948 (UDHR). Article 19 of UDHR provides for the right to freedom of information and expression to all individuals without any interference. This includes the right to seek, receive and impart information and ideas through any media and regardless of frontiers. This Article does not impose any limitations in the exercising of this freedom. Article 29(2) and (3) contains the general limitations for all rights and freedoms contained in UDHR including the freedom of expression.

The right to freedom of expression was translated into binding form in the ICCPR of 1966. Article 19 of ICCPR guarantees everyone the right to hold opinions without interference. This includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

According to ICCPR, this right may be subject to certain restrictions, on the extent that those limitations are provided by law and are necessary for (a) respect of the rights or reputations of others; (b) the protection of national security or of public order or of public health or morals.²

¹ Resolution 59 (1), 14 December, 1946.

² Article 19 (3) of the ICCPR

In spite of the international protection of the freedom of expression, this right is similarly protected regionally through different regional human rights instruments and bodies. These instruments include the European Convention of Human Rights of 1950³, the American Convention of Human Rights of 1969⁴ and the African Charter of Human and Peoples Rights of 1981 (ACHPR)⁵. Article 9 of the ACHPR gives every individual the right to receive information as well as the right to disseminate opinion within the law. ⁶

In expanding the scope of the right to freedom of expression in ACHPR, the African Commission for Human and Peoples Rights adopted the Declaration of Principles on Freedom of Expression in Africa (2002). The Declaration elaborately contains several principles for the purpose of improvement of this freedom and is regarded as an authoritative elaboration of the guarantee of freedom of expression found in Art 9 of the African Charter on Human and Peoples Rights.⁷ The Declaration affirms that freedom of expression is an individual human right and a cornerstone of democracy as well as a means of ensuring respect for all human rights and freedoms.⁸All laws and customs that repress freedom of expression are disservice to society.⁹ They also acknowledge that respect for freedom of expression, the right of access to information lead to public transparency and accountability, as well as to good governance and the strengthening of democracy.¹⁰

ACHPR has over the years adopted a number of resolutions regarding freedom of expression and press freedom. They include the 2010 Resolution on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa and the 2011 Resolution on the Safety of Journalists and Media Practitioners in Africa.

5.0 Constitutional Framework

The United Republic of Tanzania has signed and ratified several human rights instruments including the ICCPR. Most of the ICCPR provisions including the rights to freedom of information have been incorporated in the Constitution of the United Republic of Tanzania of 1977 and the Constitution of Zanzibar of 1984.

Article 18 of the URT constitution guarantees every person the following rights and freedoms:

- a) freedom of opinion and expression of his ideas;
- b) right to seek, receive and, or disseminate information regardless of national boundaries;

³ Adopted on 4 November,1950, entered into force 3 September, 1953

⁴ Adopted on 22 November 1969, entered into force 18 July 1978

⁵ Adopted on 26 June 1981, entered into force 21 October, 1986

⁶ The ACHPR restricts the enjoyment of this right subject to the laws

⁷ The Declaration of Principles on Freedom of Expression in Africa (2002)

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

- c) freedom to communicate and a freedom with protection from interference from his communication;
- d) right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.

Section 18 of the Zanzibar Constitution of 1984 in restrictive manner has entrenched the right to freedom of expression. Section 18 reads:

8(1) Without prejudice to the relevant laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers and also has the right of freedom from interference with his communications.

(2) Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society

Unlike the Article 18 of the URT Constitution, section 18 of the Constitution of Zanzibar subjects the right to freedom of expression to the local laws. This implies that the enjoyment of this right in Zanzibar largely depends on the conditions imposed by the relevant laws without setting boundaries within the constitution on the permissible restrictions that may be imposed by these laws. However, section 24 of Zanzibar Constitution permits restrictions in the enjoyment of human rights and freedoms stipulated in the Constitution. According to section 24 rights and freedoms shall not be exercised by a person in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest and can be limited by the law enacted by the House of Representatives if that limitation is necessary and agreeable in the democratic system. In any case such limitation:

- a) shall not interfere the right not to be tortured, inhumanly punished and humiliated; or
- b) shall not interfere the foundation of that right; or
- c) Shall not bring more harm to the society more than what is there.

Reading carefully, section 24 of the Zanzibar Constitution has gone beyond what is required in Article 19 (3) of the ICCPR and has used terms which are loose. As we have noted above, article 19 (3) allows member states to impose conditions on the extent that those limitations are provided by law and are necessary for (a) respect of the rights or reputations of others; (b) the protection of national security or of public order (*ordre public*), or of public health or morals. According to UN Human Rights Committee, only restrictions which meet these tests (strict three part test) are considered to be legitimate.¹¹ Restricting freedom of expression for “public

¹¹ Womah Mukong v. Cameroon, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994)

interest” raises further discussion as the term can be easily abused for political or personal interests.¹² According to section 24, the limitation must not only be necessary but also agreeable in the democratic system. The word democracy being a political term can be subjectively defined and in that case the right to freedom of expression can be easily violated.

Generally the Constitution of Zanzibar, which also covers the freedom of press,¹³ does not fully protect the freedom of expression. The right is narrowly provided and it is subject to claw back clauses and therefore poses the danger of being violated. Some constitutions do not only provide for this right but also try to address various issues that may restrict the enjoyment of this right. The Constitution of Ghana of 1992 is an example of those constitutions. It guarantees freedom and independence of media and provides no room for any law to unreasonably limit the enjoyment of this right. Article 162 to 165 of Ghana Constitution provides that:

Article 162: Freedom and Responsibility of Media

1. *Freedom and independence of the media are hereby guaranteed.*
2. *Subject to this Constitution and any other law not inconsistent with this Constitution, there shall be no censorship in Ghana.*
3. *There shall be no impediments to the establishment of private press or media; and in particular, there shall be no law requiring any person to obtain a license as a prerequisite to the establishment or operation of a newspaper, journal or other media for mass communication or information.*
4. *Editors and publishers of newspapers and other institutions of the mass media shall not be subject to control or interference by Government, nor shall they be penalized or harassed for their editorial opinions and views, or the content of their publications.*
5. *All agencies of the mass media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and shall uphold the responsibility and accountability of the Government to the people of Ghana.*
6. *Any medium for the dissemination of information to the public which publishes a statement about or against any person shall be obliged to publish a rejoinder, if any, from the person in respect of whom the publication was made.*

Article 163: Responsibility of State--owned Media

All state--owned media shall afford fair opportunities and facilities for the presentation of divergent views and dissenting.

Article 164: Limitation on Rights and Freedoms

¹² Peter, M. Human Rights in Tanzania: Selected Cases and Material.(Rudiger Koppe Verlag. Koln) 1999

¹³ Massoud, O, Legal and Regulatory Framework of Media in Zanzibar (unpublished) at pg 2.

The provisions of articles 162 and 163 of this Constitution are subject to laws that are reasonably required in the interest of national security, public order, public morality and for the opinions purpose of protecting the reputations, rights and freedoms of other persons.

Article 165: Media Rights and Freedoms to be Additional to Fundamental Human Rights

For the avoidance of doubt, the provisions of this Chapter shall not be taken to limit the enjoyment of any of the fundamental human rights and freedoms guaranteed under Chapter 5 of this Constitution.

5.1 Recommendations

From the foregoing, the provisions of the Constitution in relation to the freedom of expression should be broaden to fully guarantee the freedom of expression in line with international regional human rights instruments. In particular limitations for the enjoyment of the right to freedom of expression should comply with three past test enshrined in the ICCPR. The Constitution has to guarantee the independence of media which is very important in the enjoyment of the right to freedom of expression.

6.0 Legal Framework

Zanzibar has enacted various laws to govern the right to freedom of expression. In this part the Registration of News Agent, Newspapers and Books Act, 1988, the Zanzibar Broadcasting Commission Act, 1997 and the Cyber Crimes Act, 2015 will be reviewed.

6.1 The Registration of News Agent, Newspapers and Books Act No. 5 of 1988

The Registration of News agent, Newspapers and Books Act, 1988 was enacted to regulate the registration of news agent, newspapers, books and cinematography. This Act repealed the newspaper Decree Cap 156 which was decreed on 17th December, 1938 to regulate the registration and printing of Newspapers in Zanzibar. The Act provide for the administrative framework to administer the provisions of this Act. It therefore establishes an advisory Board to advise the Minister on the implementation of this Act and consider applications brought before it.¹⁴ The Act empowers the Minister to appoint a Registrar to perform various duties as assigned under this Act.¹⁵ The Act prescribes procedures for the registration of books and cinematography.¹⁶ The procedures for the suspension and cancellation of the registration are also provided. The Act was amended in 1997, among others, to re-structure and add some functions of the Advisory Board and enhance various punishments.

¹⁴ Section 5 of the Act.

¹⁵ Section 4.

¹⁶ See Part IX of the Act

6.1.1 Weaknesses and Gaps of the Act.

In spite of being the first comprehensive law after the independence, this Act is covered by many weaknesses that hamper the right to freedom of expression in Zanzibar. These include:

6.1.1.1 Composition and Powers of the Advisory Board

As noted above, section 4 of the Act establishes an Advisory Board consisting of a Chairman appointed by the President of Zanzibar together with other members not more than five who shall be appointed by the Minister. The functions of the Board are provided under Section 5 of the Act as follows:

- (a) to consider applications made under this Act and advise the Minister;
- (b) to advise the Minister on the implementation of this Act;
- (c) to regulate the conduct and promote good ethical standards and discipline of journalists;
- (d) to arbitrate disputes between the public and the media and the state and the media;
- (e) to exercise disciplinary control over journalists, editors and publishers;
- (f) to promote generally the flows of information;
- (g) to exercise any other function that may be authorized or conferred upon it by any written law; and
- (h) to perform any other work in relation to this Act assigned to it by the Minister.

The Act is silent on the qualifications of Chairman and its members as well the criteria used in assessing the application. The Act empowers the Minister to appoint Chairman and members of the Board as he wishes. This may jeopardize its independence, weakens its performance and poses a danger in the enjoyment of the right to freedom of expression.

Further, powers of the Board under this Act are only advisory. The Minister can or cannot comply with an advice given by the Board. Freedom of expression can be effectively exercised if there is self-independent regulatory body monitoring and regulating matters specified in this Act.¹⁷ Considering the sensitivity of matters specified in this Act, this Board should be given wider powers including the registration, suspension and cancellation of registration of newspapers, books and cinemas and should no longer be an advisory board.

¹⁷ Sururu, O, Freedom of Expression and Democratic Process: An Analysis of Laws and Policies relating to the Right of Freedom of Expression in Zanzibar (unpublished) Thesis Submitted in Partial Fulfilment of the Requirements for the Degree of Master of Philosophy in the Theory and Practice of Human Rights, Norwegian Centre for Human Rights, Faculty of Law, University of Oslo, 2010.

6.1.1.2 Appointment and Qualifications of a Registrar

The Act also empowers the Minister to appoint a Registrar of Books and Newspapers.¹⁸ The Act is silent on the qualifications and the procedures for the application. This power given to the Minister provides for a room for an appointment of an unqualified person and therefore poses a risk in a proper performance of assigned duties. It is pertinent for this Act to be amended to provide for the qualifications of the registrar and a requirement for the application for the post.

6.1.1.3 Power of the Minister to exclude the application of the Act

The Act vests in powers to the Minister responsible for information to exclude part or some of the provisions of the Act to the party or class of persons. This include powers given to the Minister under Section 7 of the Act that empowers the Minister to exclude any specified person or class of persons or institution from the operation of all or any of the provisions of the Part II in respect of registration, either absolute or subject to such conditions as he may think fit. Part II of this Act requires any person who wishes to print or publish any newspaper to swear an affidavit before a magistrate before printing or publishing a newspaper. The excluded persons may not therefore be bound by this requirement. The import of section 7 is that some people may be excluded from this requirement when the Minister so desires without being legally required to cite any reasons for such exclusion. This may open for a room for its abuse and promotes inequality among people.¹⁹

Similar effects can be attributed to section 17 (1) that empowers the Minister to exclude the printing in respect of any newspaper by or on behalf of any political Party registered under the Act no. 5 of 1992 of the United Republic or of the Revolutionary Government of Zanzibar. Under Section 17 (2) the Minister is vested with discretionary powers to exclude any person from requirement of Part IV of the Act either absolutely or subject to such conditions as he may deem fit. Part IV of the Act requires the execution of a bond before a person publishes a newspaper printed in Zanzibar.

It is therefore recommended that this Act should be amended to delete all provisions empowering the Minister or any person to exclude the application of any part of this Act to a person or class a person. If such exclusion is necessary, limitations and a requirement to give reasons, subject to review or appeal must be provided.

6.1.1.4 Powers of the Minister in respect to the Bond

The Act imposes a requirement to any person who wishes to print or publish a newspaper in Zanzibar to execute a registered bond and delivered to the Register

¹⁸ Section 3 of the Act.

¹⁹ Uki, A, Analysis of Media Related Acts and Proposals to the Government (unpublished), 2016.

before printing or publishing.²⁰ This shall serve as a security for the payment of monetary penalty in case of a conviction for any offense under this Act. The Act requires the bond to be executed in the presence of a magistrate in the presence and one witness and this bond shall be enforced by a magistrate in the same manner as the bail bond under the Criminal Procedures Act.²¹ However, the Minister is given power to call obligor, surety or any person liable under the Bond to satisfy the Minister as to his means and for that purpose the Minister may ask for a statutory declaration. Upon failure of an obligor, surety or any person to satisfy the Minister as to means, the bond shall become void.²² As the court is directly involved in the execution of a bond, the question of means of surety or any person could also be entrusted to the court and not to the Minister for the sake of justice.

6.1.1.5 President Power to prohibit the Importation of News Paper

The Act empowers the President of Zanzibar to prohibit the importation of publication if he is in opinion that the importation of any publication would be contrary to the public interest.²³ The President may also exercise discretionary powers of prohibiting importation of the publication of any special person either absolutely or conditionally for public interest.²⁴ That power may be exercised by the President without affording any aggrieved person a right to be heard or without giving reason for the prohibition. A public interest test can be subjectively used and therefore put the right to freedom of information at risk.

6.1.1.6 Suspension and Prohibition of News Paper

The Act also gives powers to the Minister responsible for information in the name of public interest or in the interest of peace and good order to order the suspension of Newspaper.²⁵ The Minister is only required to notify the Advisory Board within seven days after such order as whether to prohibit the publication of newspaper or to allow it either conditionally or unconditionally.²⁶ Where the Minister with advice of the Board is in the opinion that prohibiting the publication of any newspaper is the interest of peace and good order, he may order the suspended newspaper in writing to cease publication.²⁷ It is very dangerous to confer absolute powers to the Minister to suspend and prohibit the publication of a newspaper without affording the other party the right

²⁰ Section 18 of the Act.

²¹ Section 18 (5).

²² Section 21 of the Act.

²³ Section 34 (1).

²⁴ Section 34 (1).

²⁵ Section 30 (1) of the Act.

²⁶ Section 30 (2).

²⁷ Section 31.

to heard. The duty of the Board is only to advise the Minister who is not bound to act upon the advice of the Board. This may pose a threat to the right to freedom of expression.

6.1.1.7 Licensing, Suspension, Revocation and Appeal for Journalist

The Act bars any person to work as a journalist in Zanzibar unless he or she obtains a written authorization from the Director responsible for Information Services.²⁸ The Director may, on receipt of an application made in that behalf and upon payment by the applicant of the prescribed fee (if any), issue to any person the authorization in writing upon such conditions as it may consider fit in the authorization.²⁹ However, the Act empowers the Director to refuse issuing any authorization or suspend or revoke any authorization without citing reasons.³⁰ If any person is aggrieved by the decision of the Director, may appeal to the Minister responsible for information whose decision shall be final and conclusive and shall not be subject to review by any court.³¹ The Minister of Information may revoke any issued license in the interest of the public or would be in the interest of peace and good order.³²

The licensing requirement of print media has been widely and repeatedly criticized as it constitutes the violation of the right to freedom of expression.³³ The International law allows a purely administrative requirement for publications to provide basic information about themselves to the authorities, such as the location of their offices, and the names of their owners, so long as there is no discretion on the part of the government to refuse registration.³⁴ Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allows for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematic.³⁵

²⁸ Section 39 (1).

²⁹ Section 39 (2).

³⁰ Section 39(3).

³¹ Section 39 (3) and (4).

³² Section 40

³³ Paragraph 23 of concluding observations of the Human Rights Committee: Lesotho, 8 April 1999, UN Doc. No.CCPR/C/79/Add.106. Available in: <http://www1.umn.edu/humanarts/hrcommittee/lesotho1999.html> ... the Inter American Court of Human Rights unanimously concluded in the case of Compulsory Membership in Association Prescribed by Law for the Practice of Journalism, that the compulsory licensing of press violates the freedom of expression which guarantees the individual and public the right to express and to receive information and ideas

³⁴ Principle VIII of the Declaration of Principles on Freedom of Expression in Africa, 2002

³⁵ U.N Press Release 18 December 2003. Available in:

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument>

Imposing a finality clause in section 39 (2) and (4) is another shortcoming of this Act. International laws and national laws have been holding against barring the power of court to determine the legality of matter or order imposed by the administrative process. In the case of *Anisminic v. Foreign Compensation Commission*,³⁶ the House of Lords held that, *the finality clauses which attempt to prevent the judicial determination are incapable of ousting judicial review jurisdiction of the Court. Where jurisdictional issues are involved ouster clause, no matter how tightly worded, would not prevail and the Court has the jurisdiction to declare any decision as nullities.*

The African Commission of Human and Peoples Rights held against the total discretion and finality of the decision of the registration board, which effectively gives the government the power to prohibit publication of any newspapers or magazines they choose in *Media Rights Agenda (on behalf of Mr. N. Malaolu) v. Nigeria*. This invites censorship and seriously endangers the rights of the public to receive information protected by article 9(1) of the Charter.³⁷ To exempt a public authority from the jurisdiction of the courts of law is, to that extent, to grant doctrinal power.³⁸ Lord Denman comments that a statute cannot affect our right and duty to see justice executed and they have always been thought of as defenders of the rights of individuals from attack by government.³⁹

6.1.1.8 Seditious and Defamation Offences

The Act prescribes various offenses including sedition and defamation offenses. Section 48 of the Act creates seditious offences for any person who:

- a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;
- b) utters any word with a seditious intention;
- c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;
- d) imports any seditious publication, unless he has no reason to believe that it is seditious, shall be guilty of an offence and shall be liable upon conviction to a fine of not less than five thousand shillings but not exceeding fifty thousand shillings or imprisonment not exceeding five years or to both such fine and imprisonment and such publication shall be forfeited to the government.

³⁶[1969] I ALL ER 208.

³⁷ ACHPR, *Media Rights Agenda (on behalf of Mr. N. Malaolu) v. Nigeria*, No. 224/98, decision adopted during the 28th session, 23 October –6 November 2000. Available in: <http://www1.umn.edu/humanrts/africa/comcases/22498.html> (sited 08 January 2010), par 69

³⁸ *Ibid.*

³⁹ *R v. Cheltenham Commissioner*, x, 1841, QB, pg. 467.

There has been a serious campaign in many nations to outlaw seditious offenses for being vague and in most cases they have been used as an attempt to silence political dissent based on the weak justification that the speech itself is an action in the specific cases of sedition.⁴⁰ In some jurisdictions national courts have been holding against sedition offenses as being inconsistent with constitutional provisions guaranteeing the right to freedom of expression.⁴¹ Seditious law is found an anachronistic and unjustified interference with the freedom of expression and the abolition of the sedition offence is more preferred.⁴²

In similar regard, the Act prescribes criminal defamation against any person who by print, writing, painting, and effigy or by any means unlawfully publishes any defamatory matter with intent to defame another person.⁴³ Defamatory matter is defined to mean a matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule or likely to damage any person in his profession or trade.⁴⁴ There has been emerging trend to repeal criminal defamation as it is against the right to freedom of expression. Countries like Ghana and South Africa are example of those countries in Africa where defamation has remained a civil action and not a criminal offense. It is maintained that an attack on a person's reputation is a civil matter, which is adequately addressed and redressed by the tort of defamation.⁴⁵ Principle 4 of the Principles of Freedom of Expression and Protection of Reputation of 2000 calls for the abolition of criminal demotion in lieu of civil action.⁴⁶ In many countries, criminal defamation laws are abused by the powerful to limit criticism and to stifle public debate.⁴⁷ The threat of harsh criminal sanctions, especially imprisonment, exerts a profound chilling effect on freedom of expression.⁴⁸

In balancing the conflicting interests between freedom of expression and the protection of reputation, the courts would normally proceed from the principle that the right to freedom of expression, being a fundamental human right, must be given preferential

⁴⁰ Sorial, S. 2007, 'Sedition and the question of freedom of speech', Current Issues in Criminal Justice, vol. 18, no. 3, pp. 431-448. In *Boucher v. The King* (1951) 2 DLR 369; 382 Mr. Justice Kellock of Canada stated that "*Probably no offence has been left with such vagueness of definition*".

⁴¹In *Arthur Nwankwo v The State*, the Nigerian Court of Appeal struck down on the offence of sedition and held that sections 51 and 52 of the Criminal Code dealing with sedition are inconsistent with section 36 of the 1979 Constitution (now section 39 of the 1999 Constitution).

⁴² op.cit note 17.

⁴³ Section 53 of the Act.

⁴⁴ Ibid, Section 54.

⁴⁵ Imo J. Udofa, *Right to Freedom of Expression and the Law of Defamation in Nigeria*, International Journal of Advanced Legal Studies and Governance, Vol. 2, No.1, April 2011.

⁴⁶ Principles on the Freedom of Expression and Protection of Reputation, 2000

⁴⁷ Comment on Principle 4 of the Principles on Freedom of Expression and Protection of Reputation.

⁴⁸ Ibid.

protective consideration; and any claim to its restriction or derogation must be construed strictly.⁴⁹ The European Court on Human Rights confirmed this approach in the Sunday Times Case, when it ruled that where the principle of freedom of expression is subject to a number of exceptions, such exceptions must be narrowly construed. Thus, a plaintiff in an action for defamation must satisfy the court that he is entitled to invoke the exception to restrict or curtail the defendant's fundamental right to freedom of expression.⁵⁰

From the foregoing discussion it is therefore recommended that criminal defamation in this Act be repealed. If anyone is defamed he or she can file a civil suit to protect his or her reputation.⁵¹

6.1.1. 9 Power of the Minister in the Establishment of Journalist Association

The Act confers powers to the Minister responsible for information to authorize the establishment of the Journalist Associations whose membership shall be holders of a valid authorization and those who are connected with collection, distribution and dissemination of news who are ordinarily resident of Zanzibar.⁵² Journalists should be left free to form their associations in line with ordinary procedures governing the formation of societies without being authorized by the Minister.

6.1.2 Recommendations

From the foregoing weaknesses, it is therefore recommended that this Act to be amended on the following:

- a) An independent and effective regulatory body must be established instead of an advisory board;
- b) The Body must be given powers to register, suspend and cancel the registration of newspapers and books;
- c) Appeals against the decision of that Body have to be referred to the High Court or any judicial body instead of being referred to the Minister;
- d) The Body must be composed of highly qualified personnel and must hail from different institutions;
- e) Qualifications of members and senior officials must be clearly stipulated;

⁴⁹ Supra, note 46.

⁵⁰ Supra note 48

⁵¹ Even in civil defamation, the Principles requires the the limitation period for filing a defamation suit should, except in exceptional circumstances, be no more than one year from the date of publication and proceedings are conducted with reasonable dispatch, in order to limit the negative impact of delay on freedom of expression.

⁵² Section 75 of the Act.

- f) The requirement of registering journalists must be deleted;
- g) Seditious offenses and criminal defamation must be deleted;
- h) Powers to suspend and prohibit any newspaper must be vested in the regulatory body subject to judicial review and oversight;
- i) The establishment of journalist organizations must follow ordinary procedures in the establishment of NGOs instead of being authorized by the Minister.

7.0 Zanzibar Broadcasting Commission Act No. 7 of 1997

The Zanzibar Broadcasting Commission Act, 1997 was enacted to provide for regulatory framework of broadcasting services in Zanzibar. It repealed the Zanzibar Broadcasting Corporation Decree No 25 of 1961. The Act applies to all persons carrying on business which involves:-

- a) the offering for sale, selling, letting on hire or dealing otherwise in broadcasting apparatus;
- b) the ownership and operation of a broadcasting service;
- c) the ownership and operation of a satellite dishes, busters and other equipment of that nature.

The Minister may, by order published in the Gazette, exempt from the provisions of the Act any business or any category of businesses involving broadcasting; or any person carrying on any business or any category of such persons.⁵³

The Act establishes the Zanzibar Broadcasting Commission which is a body corporate with all features of a body corporate.⁵⁴ The Commission is composed of a Chairman who is appointed by the President of Zanzibar, executive Secretary who shall be the Chief Executive Officer and who shall be appointed by the President of Zanzibar, not less than four nor more than eight other members appointed by the Minister responsible for the information and a State Attorney from the Attorney-General's Office.⁵⁵ A person can only be appointed a member of the Commission if he a Zanzibari or Tanzanian who is not declared a bankrupt and has not previously been convicted of an offence involving moral turpitude or for which he was sentenced to imprisonment for a term of six months or more.⁵⁶

The functions of the Commission are listed under section 7(1) which include:

- (a) to issue broadcasting licences;

⁵³ Section 3 of the Act.

⁵⁴ Section 5 of the Act.

⁵⁵ Section 6 (1).

⁵⁶ Section 6 (2).

- (b) to regulate and supervise broadcasting activities, including but not limited to, the relaying of sound, radio and television programmes from places in Zanzibar to places outside Zanzibar with the intention that such broadcasts are received regularly in the United Republic or any part of it;
- (c) to maintain a register of all persons licensed as broadcasters, dealers in broadcasting stations;
- (d) to regulate the activities of broadcasters and their conduct of broadcasting as well as that of dealers in broadcasting apparatus;
- (e) to be responsible for the standardization, planning and management of the frequency spectrum available for broadcasting and to allocate such spectrum resources in such manner as to ensure the widest possible diversity of programming and optimal utilization of the spectrum resources, giving priority where possible to the broadcaster transmitting the maximum number of hours per day and to community-based broadcasters;
- (f) to protect policy, security, culture and tradition of Zanzibar not to be destroyed; and
- (g) to inspect institutions which carry on broadcasting business;
- (h) to give any direction to the broadcasting business which in its opinion deem necessary.

The Commission shall perform any other function which may be assigned to it by the President in writing under his hand or by or under any other written law.

7.1 Weaknesses and Gaps of the Act

The Broadcasting Commission Act, 1997 is an important legislation providing for a regulatory framework for broadcasting services. However, this Act is covered by some weaknesses that have bearing in the freedom of expression in Zanzibar.

7.1.1 Independence of the Commission

The Act does not guarantee the independence of the Commission. As alluded above, the commission is composed of a chairman appointed by the President of Zanzibar and members who are appointed by the Minister. The Act is silent on the qualifications of the Chairman who is appointed depending on the wishes of the President. The tenure of the office of the chairman is not secured as his term depends on the pleasure of the President. Other members, a part from one who is an expert on broadcasting, others are not required to hold any academic qualifications. The Act is also silent on the grounds for the removal of members implying that they may be removed from the office as the appointing authority wishes. Besides the functions given to the Commission by the Act, the Commission is also required to perform any other function assigned to by the President of Zanzibar. This situation does not guarantee independence and impartiality of members of the Commission. It otherwise promotes interference in the powers and functions of the Commission.

7.1.2 Appeal for the Refusal of License

The Act provides for the procedures of granting and refusing an application of a license. An application for a license may be made only by a Zanzibari or Tanzanian; a Company registered in Zanzibar at least 20% of whose shareholding is beneficially owned by Zanzibar Government; a Company not registered in Zanzibar but at least 30% of whose shareholding is beneficially owned by Zanzibar Government which is not, directly or indirectly, controlled by persons who are not Zanzibaris.⁵⁷

The Commission may refuse granting a license and in case a person is aggrieved by the decision of the Commission decision may appeal to the Minister.⁵⁸ The Act is not only silent on the clear grounds for refusal but also does not oblige the Commission to give reasons for the refusal. To refer appeals to the Minister is another deficiency of this Act. This task requires an independent judicial body to review the actions of an administrative organ. It is therefore dangerous to entrust the Minister who has some powers to the Commission, to entertain appeals from the Commission.

7.1.3 Prohibition of Multi ownership

Section 12 (4) of the Act prohibits the Commission under any circumstances to permit any person to have both radio and television station at a time but such person shall be granted only one of them. This provision not only interferes in the work of the Commission but also defeats the multi ownership concept to widen the news coverage.⁵⁹ This provision has no meaning in this competitive business environment as it tends to discourage the people to give their opinions in different media outlets. Further, section 15 (3) (g) of the Act limits advertisements to a maximum of 30% percent of the total daily broadcasting time. It does not contribute to the development and performance of the media. It frustrates the spirit of competitive business atmosphere.⁶⁰

7.1.4 Compulsory broadcasting and prohibition of broadcasting relating to National Security

The Act empowers the Minister or any person authorized by the Minister, by order to require any license holder to broadcast forthwith or within or at any time and in any manner specified, any announcement which as its content any matter which the Minister deems to be in the interest of national security or in the public interest.⁶¹ Likewise, if the Minister is of opinion that, the broadcasting of any matter or matter of any class or character, would be contrary to the national security or public interest he may, by notice in writing delivered at the principal

⁵⁷ Section 12 of the Act.

⁵⁸ Section 13 (5).

⁵⁹ Supra note, 16

⁶⁰ Ibid.

⁶¹ Section 27 (1)

office of the license holder, prohibit the license holder from broadcasting such matter or matter of such class or character and the license holder shall comply with any such notice so delivered.⁶²

The national security and public interest are not defined as a basis for ordering broadcasting or prohibition of broadcasting. The possibility of this loose wording of the provision is very problematic hence there is a possibility of using it under improper consideration. The Principle I of Johannesburg Principle requires that no restriction on freedom of expression or information on the ground of national security unless the government demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.⁶³ The abuse of restrictions on freedom of expression and information in the name of national security has been, and remains, one of the most serious obstacles to respect for freedom of expression.⁶⁴

7.2 Recommendations

It is therefore recommended that the Act to be amended to:

- a) provide the academic and experience qualifications of the Chairman and members of the Commission;
- b) provide for grounds for the removal of chairman and members of the Commission;
- c) provide specifically tenure of office of a chairman;
- d) provide that the Commission shall, in the exercise of its powers and functions, work independently and shall not follow any instruction from any person or body;
- e) Appeals against the decision of the Commission must be referred to the judicial body instead of being referred to the Minister.
- f) The Commission must be obliged to provide grounds for the refusal of registration;
- g) Section 27 that empowers the Minister to require or prohibit the license holder to broadcast any matter which the Minister deems to be in the interest of national security or in the public interest to be deleted to avoid its abuse.

⁶² Section 27 (2)

⁶³ Principle 1(d)-1.3 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.

⁶⁴ Ibid.

8.0 Cyber Crimes Act, 2015

The Cyber Crimes Act, 2015 was enacted by the Parliament of the United Republic of Tanzania in 2015 to regulate matters relating to cyber security. The Act applies to both Tanzania Mainland and Zanzibar.⁶⁵ It was tabled before the House of Representatives to be enforceable in Zanzibar in 2016.⁶⁶ The Act provide different offenses including Illegal Access, Illegal interception, Illegal data interference, Data espionage, Illegal system interference, Illegal device, Computer related forgery, Computer related fraud, Child pornography, Pornography, Identity related crimes and Publication of false information etc.⁶⁷ The Act empowers investigative officers to search and seize computer system involved in the commission of offenses under this Act.⁶⁸

8.1 Gaps and Weaknesses of the Act

The Cyber Crimes Act contains provisions which have profound effects on the freedom of expression. The Act seems to accommodate other non permissible restrictions contrary to section 19 (3) of the ICCPR.⁶⁹

8.1.1 Publication of false Information

Section 16 of the Act creates an offence against any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public or counselling commission of an offence. The section is criticized for containing words that are so broad and subjective which covers almost any information not coming directly from official statements. In other words, not only does it make the work of journalists, public figures, politicians incredibly difficult especially in situations where facts can be hard to verify, but it also make vulnerable anyone using social media.⁷⁰

The Human Rights Committee was deeply concerned at the prosecution and punishment of journalists for the crime of publication of false news merely on the ground, without more, that the news was false is a clear violation of Article 19 of the [ICCPR].⁷¹ The Committee asked the

⁶⁵ Section 2 of the Act.

⁶⁶ According to the First Schedule to the Constitution of the United Republic of Tanzania, 1977, Telecommunication falls under the Union list which must be legislated by the Union parliament. However, section 132 of the Constitution of Zanzibar, 1984 requires an Act enacted by the Union parliament which is a union matter to be tabled before the House of Representatives by the responsible Minister in order to be enforceable in Zanzibar.

⁶⁷ See Part II of the Act.

⁶⁸Part IV.

⁶⁹ Ndambaro, D p 14

⁷⁰ Tanzania: Freedom of Expression in Peril, FIDH and LHRC Joint Situation Note – August 1, 2017 - 1

⁷¹ Human Rights Committee, Concluding Observations on Cameroon, November 4, 1999, CCPR/C/79/Add

State party to ensure that any law restricting freedom of expression, meets all the requirements set out in article 19, paragraph 3 of the Covenant.⁷²

The Supreme Court of Uganda in *Charles Onyango Obbo and Anor v Attorney General*⁷³ declared unconstitutional a similar law that banned the reporting of “false” news likely to cause “fear and alarm” which was introduced in 1954 by the British colonial masters and struck it from the statute books:

[T]he right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information ... [A] person’s expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant.. Indeed, the protection is most relevant and required where a person’s views are opposed or objected to by society or any part thereof, as ‘false’ or ‘wrong’.

In making their decision, the judges specifically referred to the difficult choices to be made daily by journalists and editors:

“In practical terms, the broadness [of the provision] can lead to grave consequences especially affecting the media. Because the section is capable of very wide application, it is bound to frequently place news publishers in doubt as to what is safe to publish and what is not. Some journalists will boldly take the plunge and publish at the risk of suffering prosecution, and possible imprisonment. Inevitably, however, there will be the more cautious who, in order to avoid possible prosecution and imprisonment, will abstain from publishing. Needless to say, both the prosecution of those who dare, and the abstaining by those who are cautious, are gravely injurious to the freedom of expression and consequently to democracy.”

The Supreme Court of Canada upheld the view in **R vs. Zundel** (1992) 10 C.C.R. (2rd) 193. McLachlin J., as she then was, writing the majority judgment, had this to say -

"Tests of free expression frequently involve a contest between the (majority) view of what is true or right and an unpopular minority view

8.1.2 Impersonation

Section 15 criminalizes the impersonation of another person through a computer system. This section however excludes the mental element such as unlawfulness, dishonest intent, or serious harm resulting from this offence. Thus, humoristic impersonation of a public figure for

⁷² Ibid.

⁷³(Constitutional Appeal No.2 of 2002) [2004] UGSC 1 (10 February 2004).

comedy or political critic is criminalised, seriously undermining freedom of the media to use this way of criticizing any public figure.

8.1.3 Unsolicited Messages

Section 20 states that a person shall not, with intent to commit an offence under this Act initiate the transmission of unsolicited messages; relay or retransmit unsolicited messages, or falsify header information in unsolicited messages. Unsolicited message is defined in the Act as any electronic message which is not solicited by the recipient. In other words, any email that was not asked for by the recipient could fall into this category, as well as newsletters spam, and any other emails sent to a large audience. The section is successively complained of being vague to the extent that it is uncertain at what point in time a message becomes unsolicited? And what if the message is very much needed and critical to ones survival but no one solicit it, should the transmitter be punished for assisting and perhaps serving life of any person.⁷⁴ The severity of the punishment is thus not adequate (disproportionate) at all with the harm committed.⁷⁵ This offence is punishable with a fine of 3 million shillings or three times the value of undue advantage received, whichever is greater, or to imprisonment of a term of not less than one year or both. Three times the value of undue influence brings more uncertainty which is a fertile ground for abuse and misuse of the law.⁷⁶

8.1.4 Powers of the Minister to prescribe Offenses

Section 37 (10) gives the Minister the power to prescribe offences under which the court may grant an order for utilization of a forensic tool that means an investigative tool or device including software or hardware installed on a computer system. Such a far reaching intrusion into the privacy of a person cannot be left to the discretion of a minister. Such action on the part of the authorities must be prescribed by law, serve a legitimate interest and be necessary in a democratic society.⁷⁷

8.1.5 Search and Seizure

The Act excessively empowers the Police to conduct search and seizure without judicial oversight. A police officer in charge of the police station or any law enforcement officer may search and seize cell phones, Computer, Ipads, notice or any device. These search and seizure powers given to police are criticized for being not only wide but also a recipe for abuse.⁷⁸ The

⁷⁴ Dambaro, D. The Cyber law and Freedom of Expression: The Tanzania Perspectives, pg 15.

⁷⁵ Supra, note 71.

⁷⁶ Op.cit note 75.

⁷⁷ Hendrik Bussiek, An Assessment of the New Tanzanian Media Laws of 2015, Friedrich-Ebert-Stiftung (FES), 2015 at p 7.

⁷⁸ Supra, note 74.

Act does not only require police to obtain court order in effecting arrest and seizure but also means of challenging police powers are unavailable.⁷⁹

8.1.6 Disclosure of a Source and less protection of whistleblowers

Protection of the source is one of the cardinal principles of media profession. A source is a fountain of freedom of expression, thus for effective protection and promotion of freedom of expression, the law should always guarantee the protection of the source.⁸⁰ Section 36 of the Act compels anyone to disclose whatever information is needed by the law enforcement officers. This may mean disclosure of the source for the media and intrusion of privacy.⁸¹ Sections 4 to 7 also are also criticized for possible prosecution of whistleblowers.⁸²

8.1.7 Liability of Service Providers

Section 39 (4) of the Act obliges the provider to notify the appropriate law enforcement authority of any illegal activity or information, relevant facts and the identity of the person for whom the service provider is supplying services, if it has actual knowledge of illegal information, or activity. The UN Special Rapporteur in his 2011 report warns against such obligations on service providers or intermediaries:

Intermediaries, as private entities, are not best placed to make the determination of whether a particular content is illegal, which requires careful balancing of competing interests and consideration of defences ... (and they) should not be held liable for refusing to take action that infringes individuals' human rights.

A Joint Declaration on Freedom of Expression and the Internet⁸³ declares that no one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so 'mere conduit principle'.

At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient

⁷⁹ Tanzania: Cyber Crime Act, 2015, Legal Analysis, May 2015

⁸⁰ Supra, note 74.

⁸¹ Ibid.

⁸² Op.cit note 79.

⁸³ Signed by the UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information on 1 June 2011

protection for freedom of expression which is the case with many of the ‘notice and takedown’ rules currently being applied.⁸⁴

Therefore, any requests submitted to intermediaries to prevent access to certain content should be done through an order issued by a court or other competent body which is independent of any political, commercial or other unwarranted influence.

8.2 Recommendations

It is therefore recommended that:

- a) Section 15 which creates the offence of impersonation to be amended to include mental element such as “unlawfully”, “with dishonest intent” and serious harm has resulted from its commission.
- b) Section 16 should be repealed as it violates freedom of expression;
- c) Section 20 that criminalizes the unsolicited messages should be re-written to avoid vagueness;
- d) Section 37 (10) gives the Minister the power to prescribe offences under which the court may grant an order for utilization of a forensic tool should be amended. The list should be exhaustively provided by law to avoid its abuse.
- e) Provisions empowering police to search and powers should be amended to limit those powers by involving judicial oversight. Police must first apply for a court before executing search seizure. Procedures to challenge excessive powers by police must be included in the Act;
- f) The disclosure of information shall be without prejudice to whistleblowers protection;
- g) Any requests submitted to intermediaries to prevent access to certain content under section 39 should be done through an order issued by a court or other competent body which is independent of any political, commercial or other unwarranted influence;
- h) Procedural safeguard to the protection of human rights especially right to freedom of information should be included in the Act;
- i) The obligation to uphold and protect the right to freedom of expression must also be included in the Act.

⁸⁴ Ibid.

9.0 Conclusion

It is widely recognized that the right freedom of expression is foundational human right of greatest importance. It is also acknowledged that this right is not absolute right. Some limitations may be imposed to restrict freedom of expression. International Instruments urges states to restrict this rights based on permissible restrictions as provided in Article 19 (3) of the ICCPR that restrictions must be provided by law and must be necessary for (a) respect of the rights or reputations of others; (b) the protection of national security or of public order (*ordre public*), or of public health or morals. The right to freedom of information in Zanzibar is entrenched in the Constitution of 1984 as has been shown above. However the right is not fully guaranteed as it is subject to other laws which, according to this study, contain various non permissible restrictions which unreasonably limit the enjoyment of this right. Recommendations to widen the scope of this right in accordance with International standards have been provided in each section. It is therefore pertinent at this juncture to compile recommendations recommended in various studies to improve constitutional and legal provisions relating to the right to freedom of expression.

10.0 REFERENCES

10.1 Books and Articles

Ndambaro, D, *The Cyber law and Freedom of Expression: The Tanzania Perspectives*.

Hendrik Bussiek, *An Assessment of the New Tanzanian Media Laws of 2015*, Friedrich-Ebert-Stiftung (FES), 2015.

Udofa, I, *Right to Freedom of Expression and the Law of Defamation in Nigeria*, International Journal of Advanced Legal Studies and Governance , Vol. 2 , No.1 , April 2011.

Massoud, O, *Legal and Regulatory Framework of Media in Zanzibar* (unpublished)

Peter, M. *Human Rights in Tanzania: Selected Cases and Materials* (Rudiger Koppe Verlag. Koln) 1999.

Sorial, S. 2007, 'Sedition and the question of freedom of speech', *Current Issues in Criminal Justice*, vol. 18, no. 3,

Sururu, O, *Freedom of Expression and Democratic Process: An Analysis of Laws and Policies relating to the Right of Freedom of Expression in Zanzibar* (unpublished) Thesis Submitted in Partial Fulfilment of the Requirements for the Degree of Master of Philosophy in the Theory and Practice of Human Rights, Norwegian Centre for Human Rights, Faculty of Law, University of Oslo, 2010.

Tanzania: *Cyber Crime Act, 2015*, Legal Analysis, May 2015.

Tanzania: *Freedom of Expression in Peril*, FIDH and LHRC Joint Situation Note – August 1, 2017 – 1.

Uki, Ali, *Analysis of Media Related Acts and Proposals to the Government* (unpublished).

U.N Press Release 18 December 2003. Available in:
<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument>

10.2 Constitutions

Constitution of Zanzibar of 1984

Constitution of the United Republic of Tanzania of 1977

Constitution of Ghana, 1992

10.3 Legislation

Cyber Crime Act of 2015

Registration of News Agents, Newspapers and Books Act, 1988 (Act No. 5 of 1988)

Zanzibar Broadcasting Commission Act, 1997 (Act No. 7 of 1997)

10.4 International Instruments

African Charter on Human and People Rights of 1981

American Convention of Human Rights of 1969

Comment on Principle 4 of the Principles on Freedom of Expression and Protection of Reputation.

Declaration of Principles on Freedom of Expression in Africa, 2002

European Convention of Human Rights of 1950

General Assembly Resolution 59 (1), 14 December, 1946

International Covenant on Civil and Political Rights of 1966

Joint Declaration on Freedom of Expression and the Internet Signed by the UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information on 1 June 2011.

Johannesburg Principles on National Security, Freedom of Expression and Access to Information

Principles on the Freedom of Expression and Protection of Reputation of 2000

Resolution on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa of 2010

Resolution on the Safety of Journalists and Media Practitioners in Africa of 2011

Universal Declaration of Human Rights of 1948

10.5 Cases and Communications

Anisminic v. Foreign Compensation Commission [1969] I ALL ER 208

Arthur Nwankwo v The State, Court of Appeal Nigeria

Boucher v The King (1951) 2 DLR 369

Charles Onyango Obbo and Anor v Attorney General Constitutional Appeal No.2 of 2002 [2004] UGSC 1 (10 February 2004)

R vs. Zundel (1992) 10 C.C.R. (2rd) 193

ACHPR, Media Rights Agenda (on behalf of Mr. N. Malaolu) v. Nigeria, No. 224/98 available at: <http://www1.umn.edu/humanrts/africa/comcases/22498.html> visited on 14 April 2019.

R v. Cheltenham Commissioner, x, 1841, QB, pg. 467

Womah Mukong v. Cameroon, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994)