NOTE

on the

UNITED REPUBLIC OF TANZANIA INFORMATION AND BROADCASTING POLICY

by

ARTICLE 19
Global Campaign for Free Expression

London
February 2004

I. Introduction

This Note assesses the Information and Broadcasting Policy issued by the Office of the Prime Minister of the United Republic of Tanzania October 2003. The Policy is the outcome of a long process of consultation and stakeholder involvement, including the adoption of a set of policy recommendations by a broad group of stakeholders in July 2001, as well as a Stakeholders' 'Response to the New Media Policy'.

The Policy is progressive in outlook and seeks, as a guiding objective, to create an enabling environment for flourishing information and broadcasting sectors, in accordance with the guarantee of freedom of expression found at Article 18 of the Constitution of Tanzania and at Article 19 of the *Universal Declaration of Human Rights*. The Policy contains a number of very positive specific recommendations, including a commitment to bring Tanzanian law and practice into line with international and constitutional standards and to promote an independent and diverse media sector.

At the same time, the Policy contains a number of features which are either in breach of international standards of respect for freedom of expression or which give cause for concern on those grounds. In places, the Policy appears to present a misguided view of

the respective roles of the State and private media outlets. The Policy also refers to a number of vague and potentially unreasonable content restrictions on the media. Other concerns with the Policy include a commitment to retain registration of media outlets, the desire to regulate the Internet, excessive restrictions on foreigners, a failure to recognise the need for independent regulatory bodies and a lack of commitment to public service, as opposed to State, broadcasting.

This Note sets out ARTICLE 19's main concerns with the new Policy. We very much welcome the central thrust of the Policy, which is largely progressive and is clearly designed to bring Tanzanian law and practice into line with international standards on freedom of expression. However, at the same time we are of the view that more needs to be done and that the authorities should take full advantage of the widespread consultations that have taken place around these issues to ensure full compliance with international standards. The second part of the Note outlines a number of key international standards in this area, while the third part outlines our concerns.

II. International Standards

III.1 The Importance of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR)[1] guarantees the right to freedom of expression in the following terms:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.[2]

The *International Covenant on Civil and Political Rights* (ICCPR),[3] a treaty ratified by over 145 States, including Tanzania,[4] imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

> 1. Everyone shall have the right to freedom of opinion.
> 2. Everyone shall have the right to freedom of expression; this right shall include 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.

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[1] UN General Assembly Resolution 217A(III), adopted 10 December 1948.

[2] See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).

[3] UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

[4] Tanzania ratified the ICCPR in June 1976.

Freedom of expression is also protected in all three regional human rights instruments, at Article 9 of the *African Charter on Human and Peoples' Rights*,[5] Article 10 of the *European Convention on Human Rights*[6] and Article 13 of the *American Convention on Human Rights*.[7] Tanzania is a party to the African Charter. The right to freedom of expression enjoys a prominent status in each of these regional conventions and, although, outside of the African Charter, these are not directly binding on Tanzania, judgments and decisions issued by courts under these regional mechanisms offer an authoritative interpretation of freedom of expression principles in various different contexts.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."[8] As the UN Human Rights Committee has said:

> The right to freedom of expression is of paramount importance in any democratic society.[9]

III.2 Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently emphasised the "pre-eminent role of the press in a State governed by the rule of law." [10] It has further stated:

> Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.[11]

And, as the UN Human Rights Committee has stressed, a free media is essential in the political process:

> [T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.[12]

The Inter-American Court of Human Rights has stated: "It is the mass media that make the exercise of freedom of expression a reality."[13] The media as a whole merit special

[5] Adopted 26 June 1981, in force 21 October 1986.
[6] Adopted 4 November 1950, in force 3 September 1953.
[7] Adopted 22 November 1969, in force 18 July 1978.
[8] 14 December 1946.
[9] *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.
[10] *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.
[11] *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.
[12] UN Human Rights Committee General Comment 25, issued 12 July 1996.
[13] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory

protection, in part because of their role in making public "information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'."[14]

The European Court of Human Rights has also stated that it is incumbent on the media to impart information and ideas in all areas of public interest:

> Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] … it is nevertheless incumbent upon it to impart information and ideas of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would by unable to play its vital role of "public watchdog".[15]

It may be noted that the obligation to respect freedom of expression lies with States, not with the media *per se*. However, these obligations do apply to publicly-funded broadcasters. Because of their link to the State, these broadcasters are directly bound by international guarantees of human rights. In addition, publicly-funded broadcasters are in a special position to satisfy the public's right to know and to guarantee pluralism and access, and it is therefore particularly important that they promote these rights.

III.3 Restrictions on Freedom of Expression

The right to freedom of expression is not absolute. Both international law and most national constitutions recognise that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
> (a) For respect of the rights or reputations of others;
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

A similar formulation can be found in the European and American regional human rights treaties.[16] These have been interpreted as requiring restrictions to meet a strict three-part test.[17] International jurisprudence makes it clear that this test presents a high standard which any interference must overcome. The European Court of Human Rights has stated:

> Freedom of expression … is subject to a number of exceptions which, however, must

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Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

[14] *Thorgeirson v. Iceland*, note 10, para. 63.

[15] See *Castells v. Spain*, note 11, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87, para. 65.

[16] The African Charter has a different, rather weaker, formulation.

[17] See, for example, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

> be narrowly interpreted and the necessity for any restrictions must be convincingly established.[18]

First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct."[19] Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must be necessary to secure one of those aims. The word "necessary" means that there must be a "pressing social need" for the restriction. The reasons given by the State to justify the restriction must be "relevant and sufficient" and the restriction must be proportionate to the aim pursued.[20]

III.4 Pluralism

Article 2 of the ICCPR places an obligation on States to "adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant." This means that States are required not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know.

An important aspect of States' positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and ensure equal access of all to, the media. As the European Court of Human Rights stated: "[Imparting] information and ideas of general interest … cannot be successfully accomplished unless it is grounded in the principle of pluralism."[21] The Inter-American Court has held that freedom of expression requires that "the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media."[22]

The UN Human Rights Committee has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance 'national unity' violate freedom of expression:

> The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.[23]

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[18] *Thorgeirson v. Iceland*, note 10, para. 63.
[19] *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).
[20] *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).
[21] *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.
[22] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 13, para. 34.
[23] *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

The obligation to promote pluralism also implies that there should be no legal restrictions on who may practise journalism[24] and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression. In a Joint Declaration issued in December 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression state:

> Individual journalists should not be required to be licensed or to register.
> …
> Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance. [25]

III.5 Public Service Broadcasting

The advancement of pluralism in the media is also an important rationale for public service broadcasting. A number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism.[26] ARTICLE 19 has adopted a set of principles on broadcast regulation, *Access to the Airwaves: Principles on Freedom of Expression and Broadcasting*, which set out standards in this area based on international and comparative law.[27] In addition, the Committee of Ministers of the Council of Europe has adopted a Recommendation on the Guarantee of the Independence of Public Service Broadcasting.[28]

A key aspect of the international standards relating to public broadcasting is that State broadcasters should be transformed into independent public service broadcasters with a mandate to serve the public interest.[29] The Council of Europe Recommendation stresses the need for public broadcasters to be fully independent of government and commercial interests, stating that the "legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy" in all key areas, including "the editing and presentation of news and current

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[24] See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 13.
[25] Adopted 18 December 2003. Available at: http://www.unhchr.ch/huricane/huricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument >.
[26] See, for example, the Declaration of Alma Ata, 9 October 1992 (endorsed by the General Conference of UNESCO at its 28th session in 1995) and the Protocol on the system of public broadcasting in the Member States, Annexed to the Treaty of Amsterdam, Official Journal C 340, 10 November 1997.
[27] (London: March 2002).
[28] Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, adopted 11 September 1996.
[29] See *Access to the Airwaves*, note 27, Principle 34. See also the Declaration of Sofia, adopted under the auspices of UNESCO by the European Seminar on Promoting Independent and Pluralistic Media (with special focus on Central and Eastern Europe), 13 September 1997, which states: "State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted status of journalistic and editorial independence as open public service institutions."

affairs programmes."[30] Members of the supervisory bodies of publicly-funded broadcasters should be appointed in an open and pluralistic manner and the rules governing the supervisory bodies should be defined so as to ensure they are not at risk of political or other interference.[31]

Furthermore, the public service remit of these broadcasters must be clearly set out in law, and include the following requirements:

1. to provide quality, independent programming that contributes to a plurality of opinions and an informed public;
2. to provide comprehensive news and current affairs programming, which is impartial, accurate and balanced;
3. to provide a wide range of broadcast material that strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
4. to be universally accessible and serve all the people and regions of the country, including minority groups;
5. to provide educational programmes and programmes directed towards children; and
6. to promote local programme production, including through minimum quotas for original productions and material produced by independent producers.[32]

Finally, the funding of public service broadcasters must be "based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions."[33] Importantly, the Council of Europe Recommendation stresses that "the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation."[34]

III.6 Independence of Regulatory Bodies

In order to protect the right to freedom of expression, it is imperative that the media is permitted to operate independently from government control. This ensures the media's role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest.

Under international law, it is well established that bodies with regulatory or administrative powers over both public and private broadcasters should be independent and be protected against political interference. In the Joint Declaration noted above, the UN, OSCE and OAS special mandates protecting freedom of expression state:

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[30] Recommendation No. R (96) 10, note 28, Guideline I.
[31] *Ibid.*, Guideline III.
[32] ARTICLE 19 Principles, note 27, Principle 37.
[33] Recommendation No. R (96) 10, note 28, Principle V.
[34] *Ibid.*

> All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.[35]

Regional bodies, including the Council of Europe and the African Commission on Human and Peoples' Rights, have also made it clear that the independence of regulatory authorities is fundamentally important. The latter recently adopted a *Declaration of Principles on Freedom of Expression in Africa*, which states

> Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.[36]

The Committee of Ministers of the Council of Europe has adopted a Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, which states in a pre-ambular paragraph:

> [T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector…specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law.[37]

The Recommendation goes on to note that Member States should set up independent regulatory authorities. Its guidelines provide that Member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities, which clearly affirms and protects their independence.[38] The Recommendation further provides that this framework should guarantee that members of regulatory bodies are appointed in a democratic and transparent manner.[39]

III. Key Concerns with the Media Policy

III.1 Respective Roles of the State and the Media

One concern ARTICLE 19 has with the Policy is that it appears to be based on an understanding of the respective roles of the State and the media in relation to promotion and protection of freedom of expression that is at odds with international standards in this area. The Introduction, for example, states that the right to impart and receive information, "like all other rights, is pegged on the responsibility of every citizen to the public welfare and personal freedom." Later on, and in more detail, the Policy states as an objective that media institutions render public service to the community (section 2.3.1) and that a media outlet should never be used for the personal interest of its owner (section 2.3.2).

[35] Note 25.
[36] Adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002.
[37] Recommendation No. R(2000) 23, adopted 20 December 2000.
[38] *Ibid.*, Guideline 1.
[39] *Ibid.*, Guideline 5.

In a similar vein, the Policy, at several points, refers to the need to ensure, variously, that media outlets and/or professionals adhere to professional codes of ethics. Such references include section 2.5.1, in relation to newspapers and magazines, sections 2.7.2 and 2.7.3, in relation to radio, television and the Internet, and section 2.8.1, in relation to films, audiovisual materials and videos. Finally, the Policy provides, at section 2.3.1, that it seeks to ensure that media owners employ qualified professional practitioners.

The legitimacy of these provisions in relation to the guarantee of freedom of expression depends on how they are interpreted. While it is true that realisation of rights depends on the actions of citizens, it is a concern that the Policy does not recognise the primary responsibility of the State to ensure respect for rights. It is, of course, legitimate to encourage media outlets to render public service and not to be used for the benefit of the owner, but to enforce this by law is likely to be highly problematical.

Similarly, it is certainly legitimate for the Policy to *encourage* media outlets and professionals to adhere to professional codes and to employ professionals but to *oblige* them to do so is contrary to the very idea of professional ethics, which are norms adopted by a profession for its own regulation. Enforcing ethics by law is of dubious benefit, since this is ultimately impossible, and it is also contrary to international guarantees of freedom of expression. Some of the terms used in the Policy, for example to 'ensure' adherence to professional ethics, imply going beyond encouragement.

Recommendations:

- The Policy should state clearly and at the outset that the State bears primary responsibility for ensuring respect for rights. Any reference to citizen or media responsibility in this context should make it clear that this is a social/moral, not legal, obligation.
- References to professional ethics and professional practitioners should uniformly be cast in terms of encouragement rather than of ensuring or enforcing.

III.2 Scope of the Policy and the Internet

The scope of the Policy is extremely broad, defining the mass media to include not only traditional mass media but also practically all forms of communication including leaflets, posters, billboards, photographs on events and the Internet. While there is no objection in principle to a broad policy, this becomes problematical in relation to a number of specific provisions. To note just a couple, the Policy provides that media owners should employ qualified professionals, render public service and not promote the interests of owners. These prescriptions are clearly inappropriate for leaflets, posters and billboards.

The Policy proposes to treat the Internet in the same manner as radio and television broadcasters. This is very problematical for a number of reasons. First, the Internet is not a broadcast medium. Although it is capable of carrying broadcasts, it goes far beyond this, operating at various different levels, including as a private communications system and a group discussion forum. To subject all of these forms of communication to the same stringent regulatory standards that are acceptable for broadcasting is not

legitimate.[40] Second, the Internet does not rely on scarce public frequencies, an important justification for broadcast regulation. Third, licensing systems for broadcasting simply do not apply effectively for the Internet. For example, it is hardly practical or reasonable to require those running a webpage, which can be simply a few pictures and text about a family, to obtain a licence.

Recommendations:

- The Policy should be restricted in scope to the mass media.
- The idea of regulating the Internet should be reconsidered. At a minimum, this medium requires very different treatment from broadcasters.

III.3 Government Media

The Policy states, at section 2.4.2, that the government will continue to own media outlets. It is unclear what, precisely, this means but it is clear that any public media must be independent from government, in the sense that they are protected against political and other interference. This is reflected, for example, in the *Declaration of Principles on Freedom of Expression in Africa*, which states, at Principle VI, in part:

> State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:
> - public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
> - the editorial independence of public service broadcasters should be guaranteed;

Recommendation:

- The Policy should make a commitment to transform all State or government media into public service media, protected against political and commercial interference.

III.4 Registration of Newspapers

Section 2.5.2 of the Policy provides that newspapers and magazines will continue to be registered by the government. Although international law does not at present rule out purely technical registration schemes for mass media organisations, they serve no purpose and can exert a chilling effect on freedom of expression and hence are increasingly being questioned. In their Joint Declaration of December 2003, the three specialised mandates for protecting freedom of expression stated:

> Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow 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 problematical.[41]

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[40] See, for example, *Reno v. American Civil Liberties Union*, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997) (US Supreme Court).
[41] Note 25.

If such a regime is nevertheless maintained, the register should be run as a purely administrative matter, akin to company registration. The information required should be lodged with an administrative body and registration should be automatic upon the submission of the relevant documents. A technical registration scheme for mass media organisations is compatible with the guarantee of freedom of expression only if it meets the following conditions:

- the authorities should have no discretion to refuse registration once the requisite information has been provided;
- registration should not impose substantive burdens and conditions upon the media; and
- the registration system should be administered by bodies which are independent of government.[42]

ARTICLE 19 is not familiar with the particulars of the registration scheme presently in place in Tanzania, but it would appear to at least be in breach of this last condition, namely that the system be administered by an independent body.

Recommendation:
- Consideration should be given to doing away with the registration requirement for print media. At a minimum, any registration regime should comply with the principles set out above.

III.5 Content Restrictions

A number of provisions in the Policy purport to limit media content. These include the following:

- "A media outlet shall never broadcast news that exploit differences based on color, ethnicity, religion, gender or disability or that fan hatred"; (section 2.3.2)
- "Radio, television and internet stations will have to abide by professional code of ethics, social values and Tanzanian culture"; (section 2.7.3)
- "Radio and television programs should promote peace, unity, togetherness and national security"; (section 2.7.3)
- "Languages to be used in radio and television broadcast in the country is English and Swahili"; (section 2.7.3)
- "Private-owned radio and television stations must participate fully in national building and in national campaigns and disasters"; (section 2.7.3)
- "Internet service providers have a duty to shield children from negative effect of internet"; (section 2.7.3)
- "Owners and those running films, video and audiovisual business should not spread segregation of whatever sort, fan political and religious hatred or harassment against

[42] See, for example, *Gaweda v. Poland*, 14 March 2002, Application No. 26229/95 (European Court of Human Rights) and *Constitutional Rights Project and Media Rights Agenda v. Nigeria*, 31 October 1998, Communication nos. 105/93, 130/94, 128/94 and 152/96 (African Commission on Human and Peoples' Rights). See also the Joint Declaration by the three special mandates for the protection of freedom of expression, note 25.

any social group. Equally, they should ensure that norms, values and the Tanzania culture is protected and respected"; (section 2.8.2) and
- "[Media Institutions will] take part in shielding society from disasters like war, famine, epidemics and environmental destruction" (section 3.4).

As with professional ethics, the legitimacy of these statements depends on how they are implemented. As aspirational goals for the media they are largely uncontroversial although even then some are overly restrictive. There is no reason, for example, why broadcasts should be restricted to Swahili and English or why they should promote national security (this is simply not the role of a broadcaster, although they may aim not to undermine national security).

If the intention is to translate them into legal obligations, as the language often implies – using terms like 'must', 'shall' and 'will' – however, they are very problematical. Some of these cannot be justified as restrictions on freedom of expression because they do not serve one of the legitimate aims recognised under international law. This is the case, for example, with promoting unity, togetherness and national building.

Far more serious, however, is that most of these 'obligations' are cast in extremely broad, vague terms. This means both that media outlets simply cannot know what is expected of them and that these provisions are open to abuse, being applied in situations for which they were not originally intended. Part of the test for restrictions on freedom of expression is that they be prescribed by law, including a requirement that they are clear and unambiguous. The concept of culture, for example, is subject to constant change and is in any case a highly subjective notion. Social values is an even less well-defined term. How are broadcasters to fulfil the obligation to promote peace? When have they done enough of this to satisfy the obligation? The same questions arise in relation to shielding society from disasters.

Recommendations:
- The content restrictions noted above should be reviewed and those that do not correspond to legitimate aims should be removed.
- It should be very clear from the wording of the Policy that these are aspirational goals for the media, which various actors should encourage, rather than specific legal obligations.

III.6 Restrictions on Foreigners

The Policy contains a number of very stringent restrictions on the participation of foreigners in the Tanzanian media. Foreigners may not run media institutions and foreign investment in any media outlet may not exceed 49%, so that the local partner will "have a final say at all times." Furthermore, foreigners may be employed only as technical experts and, even then only where such expertise is not available locally. (sections 2.3.1 and 2.3.2)

It is common to restrict foreign investment in and control over broadcasters, as part of the licensing process. However, imposing such restrictions on the print media is far more

difficult to justify and ARTICLE 19 questions whether these restrictions are legitimate. The limits of the involvement of foreigners in the industry are both excessively restrictive and very difficult to apply. It is, for example, extremely difficult to assess whether local expertise is available.

While no country would like to see its media industry controlled by foreigners, which may undermine the democratic process, among other things, it may be noted that foreign investment and involvement often attracts scarce resources to the sector and provides valuable expertise and experience. Furthermore, a key objective here is to promote local programming. A far more effective means of doing this, which is less restrictive of freedom of expression, is to set minimum local content quotas.

Recommendations:
- The restrictions on foreign investment should be limited in application to the broadcast media sector.
- The restrictions on the involvement of foreigners in media industries should be reconsidered.
- Consideration should, however, be given to imposing minimum local content requirements on broadcasters.

III.7 Independent Regulatory Bodies

The Policy provides, at section 3.7, that, "the Government through authorities established for that purpose should carry the regulation of information and broadcasting sector." As noted above, it is very well-established that any regulation of the media should be exercised by bodies which are independent of government and protected against political interference. The potential consequences of not doing this are clear: regulatory decisions will be based on political considerations rather than the need to respect freedom of expression and to promote the free flow of information and ideas to the public. The Policy fails to specify that the regulatory bodies it envisages will be independent.

Recommendation:
- The Policy should clearly specify that all regulatory bodies with powers over the media should be independent of government.

III.8 Media Concentration

One issue the Policy fails to address is that of media concentration, stating simply that investors will continue to be allowed to own more than one media outlet. While this is uncontroversial in itself, it fails to consider the situation where one investor owns many media outlets, perhaps cutting across the broadcasting and print media sectors. Undue concentration of media ownership leads to excessive power vested in one individual or one family and may undermine democracy, as well as the right of the public to a diverse, vibrant media sector. Furthermore, it is very advisable to address media concentration issues before they become a serious problem, since retroactive rules in this area are very difficult to apply and almost always give rise to allegations of political interference.

There are a number of ways in which this issue can be addressed. It is common to place restrictions on broadcast ownership, for example limiting one individual to one national and one or two local broadcasters. Restrictions may also address cross-ownership issues, prohibiting broadcast investors from owning print media outlets or limiting their ownership of the same. Restrictions may also place limits on overall control of a media sector, for example providing that no single individual may control more than 25% or 30% of a sector. Regardless of the preferred approach, it is important that media policy and then law address this issue as soon as possible.

Recommendation:
- The Policy should include provisions addressing the issue of undue concentration of media ownership.

III.9 A Single Law for the Information Sector

The Policy makes it clear, for example in section 2.2.2 and again in section 4.2, that it envisages a single piece of legislation governing the information and media sectors. While as a strict matter of principle there is no reason why this is not possible, through a sort of omnibus law, there are a number of practical reasons why this is not advisable.

The scope of the Policy is very broad, covering access to public information, broadcasting, the print media sector, the Internet, films and videos, news agencies, capacity building, journalists, ownership issues and so on. All of these issues require very different treatment. If all of these issues are addressed in one law, there may be a temptation to try to impose the same rules in relation to all of them, which will in some cases simply not work and in others will result in systems which fail to respect freedom of expression. For example, there is an enormous difference between the issue of access to public information, which is not a media right, and the issue of regulation of broadcasting, and they cannot be dealt with in the same manner. The danger of attempting to impose broadcasting rules on the Internet has already been noted.

If proper treatment of all of these subjects is to be undertaken, there seems to be little reason to do this in one law. The law will be unwieldy and difficult to understand, and may be confusing for the public. Very little effort will be saved, since in practice each issue will need to be dealt with separately.

For these reasons, countries around the world have separate laws dealing with these different topics. Common practice, for example, is to have separate laws on access to public information (or freedom of information), on broadcasting and on defamation, among other things.