



THE ELECTRONIC AND POSTAL COMMUNICATIONS (ONLINE CONTENT) (AMENDMENT) REGULATIONS, 2021

SUBMISSION TO THE TANZANIA MINISTRY OF INFORMATION, CULTURE AND SPORTS

A. Introduction

The Minister, Ministry of Information, Culture and Sports of Tanzania introduced [draft Electronic and Postal Communications \(Online Content\) \(Amendment\) Regulations, 2021](#) (2021 Amendment Regulations) in August 2021. The draft 2021 Amendment Regulations primarily amend the 2020 Regulations by introducing or repealing sections of the 2020 Regulations.

ARTICLE 19 has been following the development of these regulations for several years, analysing different proposals in this area for their compliance with international freedom of expression standards.¹ We have consistently pointed to the fact that the Regulations restrict online content in overly broad terms and impose confusing registration or licensing requirements which are in breach of international standards on freedom of expression and with the Tanzanian Constitution.

Despite some positive aspects of the 2021 Amendment Regulations,² we regret that the Minister has so far failed to address majority of our concerns. Therefore, in this submission we point out key issues with the Amendment. We also reiterate our concerns with the original Electronic and Postal Communications (Online Content) Regulations, 2020 (the 2020 Regulations). We urge the Minister to drop the 2021 Amendment Regulations and instead repeal the 2020 Regulations in their entirety for their failure to comply with human rights standards.

B. The 2021 Amendment Regulations

i) Protection of children

¹ See ARTICLE 19 [analysis of Tanzania Electronic and Postal Communications \(Online Content\) Regulations 2018](#) (the 2018 Regulations) in 2018 and [ARTICLE 19's call to repeal Electronic and Postal Communications \(Online Content\) Regulations, 2020](#).

² These include the proposal to repeal the obligation of online content service providers to use moderating tools to filter 'prohibited content' (Regulation 8); the proposal to repeal Regulation 13 which imposes various obligations of internet cafes (Regulation 11); the proposal to repeal Regulation 18 concerning protection of children by internet cafes (Regulation 12); or the proposal to repeal of Regulation 10 which prohibits any mainstream content service provider with district or regional licence from simulcasting content using online platform (Regulation 9).

The 2021 Amendment Regulations envisions repealing a problematic Regulation 18³ which obliges internet cafes to ensure that children cannot access prohibited content under the threat of criminal sanctions.⁴ Although we agree that these provisions should be abolished, we are concerned that these provisions with equality problematic language.

The proposal still requires “online content provider, host and user” to “take measures to ensure children are protected against access to any content that is harmful to the children wellbeing.”⁵ Just like with the previous formulation, the clause is broad and fails to indicate the exact measures that the online content providers, host and users are required to take. The vague nature of these provisions creates opportunity for inconsistent application of the Regulation as it leaves it at the discretion of law enforcement officers to decide what amounts to an offence. The new proposal thus fails to pass the requirement of international freedom of expression standards that require limitation of the right to freedom of expression to be drafted with sufficient clarity and precision to enable individuals to regulate their conduct accordingly (legality test).

ii) Requirement for licences and licence fees

The 2020 Regulations require online content service providers obtain a licence from the Tanzania Communication Regulatory Authority (TCRA) before providing online content services under a threat of criminal sanctions.⁶ Online content service providers are defined as persons who provide ‘online content broadcasting to the public through television, radio, blogs, weblog, instant messaging tools, social platform and aggregator by subscription.’⁷

The 2021 Amendment Regulations introduce two changes to these provisions:⁸

- It creates two licence categories - Online Content Service Licence Category A (including online media content services and online content aggregator by subscription) and Online Content Service Licence Category B (including simulcasting radio and television);⁹ and

³ See Regulation 12, draft Amendment Regulations 2021. Regulation 18 states that “a person who provides, has access to, hosts, uses online contents or operates an internet cafe shall take all possible measures to ensure that children do not register, access or contribute to prohibited content; and users are provided with content filtering mechanism and parental control.”

⁴ Regulation 21 (1), 2020 Regulations states that failure to comply with the obligations is criminalized, attracting a fine of not less than five million shillings (appx. 2,157 USD) or to imprisonment for a term of not less than twelve months or both.

⁵ Regulation 12, draft Amendment Regulations, 2021.

⁶ Regulation 4 (1), 2020 Regulations. Under Regulation 4 (2), Regulations, Failure to obtain a licence is an offence punishable by a fine of not less than five million shillings (appx. 2,157 USD) or to imprisonment for a term of twelve months or to both

⁷ Regulation 3 (b) (1), Amendment Regulations, 2021 as read with Regulation 3, 2020 Regulations

⁸ Regulation 5, draft Amendment Regulations 2021.

⁹ Regulation 5, draft Amendment Regulations 2021.

- Introduces new definitions of “online media content services,”¹⁰ “online content aggregator,”¹¹ and “simulcasting.”¹²

The 2021 Amendment Regulations also set the system of various fees to be paid for licences: application fees, initial licence fees, annual licence fees and renewal fees.¹³ Both categories are valid for only three years, after which the service providers are required to pay for renewal.¹⁴ Only category B (i.e. simulcasting) are exempted from the fees.

We reiterate our concern about the mandatory requirement to register online content service providers as this requirement goes contrary to international freedom of expression standards. In particular:

- The UN Human Rights Committee has underlined that regulatory systems should take into account the differences between the print and broadcast sectors and the internet.¹⁵ Broadcast media rely on a limited resource: the electromagnetic spectrum. Different users (radio and TV stations, mobile phone services, radar etc.) compete for scarce frequencies, and the State must establish a system to allocate them, or the result would be chaos on the airwaves. No such necessity exists with regard to print and online media; the number of such publications that can exist alongside each other is technically unlimited. Nor can concerns about content justify the imposition of a licence requirement.
- Similarly, in their 2011 Joint Declaration, four free speech mandate holders, including the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, stated that imposition of registration or other requirements on service providers are not legitimate unless they comply with the three-part test.¹⁶

¹⁰ Regulation 3 (a) “online media content services” under category A are characterised as ‘online content services provided for the purpose of news and current affairs in a manner similar to, or in a manner that resembles service providers licensed under the Act.’

¹¹ *Ibid.* “Online content aggregator” under category A means a “licensed content service provider who collects content from different sources and packs into specific baskets of channels for a purpose of being accessed by users upon payment of a prescribed fee.”

¹² Regulation 3, 2020 Regulations. “simulcasting” under Category B means ‘broadcasting content of a mainstream media on an online platform.’

¹³ Second Schedule, draft Electronic and Postal Communications (Online Content) (Amendment) Regulations, 2021. Online media content service providers are to pay TZS 50, 000 (appx. 22 USD) application fee; TZS 500, 000 (appx. 215 USD) initial licence fees; TZS 500, 000 (appx. 215 USD) annual licence fees; and TZS 100, 000 (appx. 43 USD) renewal fees. On the other hand, online content aggregator by subscription providers are to pay TZS 100, 000 application fee; TZS 1, 000, 000 (appx. 432 USD) initial licence fees; TZS 1, 000, 000 (appx. 432 USD) annual licence fees; and TZS 100, 000 (appx. 43 USD) renewal fees.

¹⁴ Regulation 7.

¹⁵ General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights (Freedoms of opinion and expression), adopted 12 September 2011, UN Doc. CCPR/C/GC/34, para. 39.

¹⁶ 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, para 6 (d).

We note that under international standards, licensing of broadcasters is permitted in view of the limited number of frequencies available. However, licensing requirement for the print media is not legitimate.¹⁷ A licensing scheme presents a major obstacle to any publishing activity and consequently the enjoyment of the right to impart information. Online media is similar to print media in the sense that there are no limits to the numbers of Internet websites that can exist alongside each other, so there is no justification for a regulatory regime for digital media that is based on licensing. Digital media should not be regulated by simply extending already existing regulatory regimes applied to other types of media. It requires a tailored approach that takes account of the unique ways in which information is disseminated on the Internet.

The scheme envisioned in the 2021 Amendment Regulations is therefore an interference with the right to freedom of expression.

C. Conclusion

ARTICLE 19 finds that the 2021 Amendment Regulations do not address our concerns raised in previous analysis. Therefore, instead of adopting this Amendment, we call on the Minister to repeal the 2020 Regulations in their entirety.

We urge the Minister that any future initiatives in this area should fully comply with international freedom of expression standards and should be developed in full and meaningful consultations with all relevant stakeholders in the sector.

¹⁷ See, e.g. the Human Rights Committee, *Laptsevitch v Belarus*, Comm. No. 780/1997, 20 March 2000; *Mavlonov and Sa'di v Uzbekistan*, Comm. No. 1334/2004, 19 March 2009 (in which the Committee established that non-registration of a newspaper violated both the right of freedom of expression of the newspaper owner but also the right to receive information of newspapers' readers); the African Commission, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, 31 October 1998, Comm. Nos. 105/93, 128/94, 130/94; the European Court, *Gaweda v. Poland*, Appl. No. 26229/95, 14 March 2002.

About us

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. We have produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, freedom of expression and equality, access to information and broadcast regulation. publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation.

All of our memoranda are available at www.article19.org. If you would like to discuss this memorandum further, or if you have a matter you would like to bring to our attention, contact our ARTICLE 19 Eastern Africa Regional Director, Mugambi Kiai at mugambikiai@article19.org