

28 March 2019



EACJ rules against Tanzania in Media Services Act case

- EACJ rules that certain provisions of the Media Services Act 2016 infringe the EAC Treaty
- Orders United Republic to take necessary measures
- Case filed by Media Council of Tanzania, LHRC and HR Defenders coalition
- Big victory for the media

In a bid to ensure adherence to the principles of democracy, rule of law, social justice and the maintenance of universally accepted standards of human rights, the East African Court of Justice (EACJ) has declared several provisions of the Media Services Act, 2016 (the Act) as violating Article 6(d) and 7(2) of the Treaty for the Establishment of the East African Community (the Treaty).

Background

On 11 January 2017, Media Council of Tanzania (MCT) together with the Legal and Human Rights Centre, and Tanzania Human Rights Defenders Coalition filed a reference before the EACJ to challenge the Act. The said Act was enacted by the Parliament of United Republic of Tanzania and came into force on 3 February 2017.

In the reference filed at the EACJ, the Applicants claimed that the Act contains unjustifiable limitations that infringe the freedom of expression which is one of the most fundamental principles of rule of law, accountability, transparency and good governance which the United Republic of Tanzania has committed to abide by, through the Treaty, amongst other international instruments.

Furthermore, the Applicants assert that the below provisions infringe the right to freedom of expression and the right to access to information:

- Section 7 (rights and obligations of media houses)
- Section 13 (functions of the Board)
- Section 14 (Powers of the Board)
- Section 19 (Accreditation of journalists)
- Section 20 (Press card)
- Section 21 (Roll of journalists)
- Section 35 (Defamation)
- Section 36 (Defamation in print media)
- Section 37 (Definition of unlawful publication)
- Section 38 (Cases in which publication is absolutely privileged)
- Section 39 (Cases in which publication is conditionally privileged)
- Section 40 (Offer of amends)
- Section 50 (Offences relating to media services)
- Section 52 (Seditious intention)
- Section 53 (Seditious offences)
- Section 54 (Publication likely to cause fear and alarm)
- Section 58 (Powers to prohibit importation of publication)
- Section 59 (Powers of the Minister)

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E: info@fbattorneys.co.tz

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FB Attorneys

8th Floor, Amani Place, Ohio Street
P. O. Box 19813
Dar es Salaam, Tanzania
T: +255 22 2135994/5
E: info@fbattorneys.co.tz
W: www.fbattorneys.co.tz

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The decision

Today, 28 March 2019, in a historic judgment, the Court held that some provisions of the Act were held to infringe articles of the Treaty. In a well-crafted judgment, Justices Monica Mugenyi (Uganda), Faustin Ntezilyayo (Rwanda), Fakihi A. Jundu (Tanzania), Audace Ngiye (Burundi), and Charles Ayako Nyachae (Kenya) ruled against the United Republic of Tanzania.

Having considered the arguments and submissions advanced by both parties, the EACJ ordered as follows:

- The provisions of sections 7(3)(a),(b),(c),(f),(g),(i) and (j); sections 19, 20 and 21; sections 35, 36, 37, 38, 39 and 40; sections 50 and 54; sections 52 and 53; and sections 58 and 59 of the Act violate Articles 6(d) and 7(2) of the Treaty
- The United Republic of Tanzania is directed to take such measures as are necessary, to bring the Act into compliance with the Treaty
- Each party to bear own costs

Some excerpts of what the EACJ said:

“Section 7(3)(a) the word “undermine” which forms the basis of the offence, is too vague to be of assistance to a journalist or other person, who seeks to regulate his or her conduct, within the law.”

“We agree with the Applicants submissions that the definition of ‘journalist’ in section 19 is too broad...”

“Applying the three tier test, it seems to us that section 35 which defines defamation is not sufficiently precise to enable a journalist or other person to plan their actions within the law.”

“Applying the above test, and in particular the first limb thereof, to section 50, it seems to us to be largely unobjectionable. However, subsection 1(c) fails the test in that ‘threatening (sic) the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health”, is too broad and imprecise, to enable a journalist or other person to regulate their actions.”

“Similarly we agree with the Applicant’s submissions that in section 54, the phrase “likely to cause fear and alarm to the public or to disturb public peace,” is too vague and does not enable individuals to regulate their conduct.”

“...sections 58 and 59 of the Act contain provisions that constitute disproportionate limitations on the right to freedom of expression. The absolute nature of the discretion granted to the minister as well as the lack of clarity on the circumstances in which such minister would impose a prohibition in our view, make the provisions objectionable relative to the rights being restricted.”

This judgment is appealable by either of the parties to the Appellate Division of the EACJ.

To read the full Judgment of the EACJ [click here](#)

To read the Media Services Act, 2016 [click here](#)

To read the Treaty for the Establishment of the EAC [click here](#)

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