

SOUTHERN AFRICA LITIGATION CENTRE

STATEMENT BY THE SOUTHERN AFRICA LITIGATION CENTRE (SALC)

61ST ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS, BANJUL, THE GAMBIA | 1-15 November 2017 |

Honourable Chair, Honourable Commissioners, State delegates, representatives of National Human Rights Institutions, members of civil society organisations and distinguished participants. The Southern Africa Litigation Centre (SALC) welcomes the opportunity to present this Statement on the situation of human rights in Lesotho and Tanzania. We raise concerns about the closing space for media freedoms in Tanzania and Lesotho.

Lesotho

We are concerned about the multiple threats to journalists and the closing space for free expression in Lesotho. The Publisher of the Lesotho Times, Basildon Peta, has in June 2016 been charged with criminal defamation and *crimen injuria*. The charges relate to a satirical article published in the Lesotho Times concerning a former commander of the Lesotho Defence Force. He has applied to stay the criminal proceedings while he brings a constitutional challenge to the criminal defamation laws in Lesotho, which is due to be heard in 2018. This situation followed the intimidation and threats against Lesotho Times Journalist Keiso Mohloboli regarding the same article. Mohloboli has been in exile since June 2016 and has continued to face intimidation. In June 2017 she received death threats believed to emanate from Lesotho's Security Services¹. There was an assassination attempt on the editor of the Lesotho Times, Lloyd Mutumgamiri, in June 2016 as well.

In September 2017, Lesotho radio station MoAfrica FM was raided and the chief editor, Candi Ramainoane, arrested following programming content which was critical of government. The radio station was subsequently closed down. Ramainoane has been charged with defamation. Earlier in the year on 9th February, the Lesotho government temporarily cut the broadcasting signals of two local radio stations, Ts'enolo Fm and People's Choice FM. In October 2017, South African Broadcasting Corporation journalist Nthakoana Ngatane's life was threatened as she tried to cover the political unrest in Lesotho. She has had to flee Lesotho as a result of these threats.

These attacks on media freedoms are taking place apparently on instructions from the Ministry of Communications, Science and Technology, who are on record stating that government had no interest in censoring the media, but it was going to take action if the country's security was being threatened.

Tanzania

¹ <file:///C:/Users/kaajalr/Downloads/AFR3364832017ENGLISH.pdf>

A wide range of restrictive laws allow authorities to exert pressure on journalists in Tanzania, and the risk of prosecution encourages self-censorship. The media landscape is diverse, but deeply polarized along political lines. Control of the media is mostly concentrated in the hands of a few proprietors, including the government, which reportedly withholds advertising contracts from critical outlets.²

In June 2017 the Tanzania government placed a 90-day ban on a popular Swahili daily newspaper, Tanzania Daima, the fourth newspaper to be shut down since June. Authorities accused it of continuously spreading "false information" after it published an incorrect claim about the number of Tanzanians taking anti-retroviral drugs used to treat HIV³.

This follows several other restrictive actions in 2016 by the Tanzanian government⁴:

- In November, President John Magufuli signed into law the restrictive Media Services Bill, which replaced self-regulatory and independent media oversight mechanisms with a government-controlled one, and required that all journalists obtain accreditation from a government-appointed board.
- In September, five people were charged under the Electronic and Postal Communications Act for sharing critical remarks about Magufuli and the country's police made on social media and messaging platforms.
- In December, a cofounder of the popular whistleblowing website JamiiForums faced charges under the Cybercrimes Act for refusing to share the forum's user data and for operating a website that is not registered in Tanzania.
- Authorities banned two newspapers, *Mawio* and *Mseto*, after they published stories on political tensions in Zanzibar and corruption allegations against President Magufuli, respectively.

These actions cumulatively amount to a crackdown on dissent and free speech in Tanzania.

We recall that the African Commission, in 2010, ***called on all states to repeal criminal defamation laws*** on the grounds that these offences "constitute a serious interference with freedom of expression and impedes on the role of the media as a watchdog." In an important decision in 2013 the African Court on Human and People's Rights declared that the protection of freedom of expression in the African Charter on Human and People's Rights required that criminal defamation only be used as a last resort, and that the use of custodial sanctions is never permissible in criminal defamation cases. Criminal defamation offences remain part of the criminal law in many other African countries, and continue to be used against journalists exposing corruption or poor governance. However, decriminalising defamation is an important way for us to enable and encourage accountability and transparency in our democracies. Recently Kenya, Zimbabwe and South Africa have declared criminal defamation to be inconsistent with the constitution. We encourage other states to follow suit.

We call on the African Commission to:

1. Urge the governments of Lesotho and Tanzania to take measures to ensure that media and journalists are able to carry out their work without fear, intimidation, threats and harassment.

² <https://freedomhouse.org/report/freedom-press/2016/tanzania>

³ <http://www.aljazeera.com/news/2017/10/tanzania-daima-ban-adds-press-freedom-concerns-171025181519339.html>

⁴ <https://freedomhouse.org/report/freedom-press/2017/tanzania>

2. Urge the governments of Lesotho and Tanzania to desist from using criminal defamation charges to intimidate and harass journalists and media workers.