



Access Now and Zaina Foundation Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 39th Session Third Cycle for the United Republic of Tanzania

25 March 2021

About Access Now & Zaina Foundation

Access Now is an international organisation that works to defend and extend the digital rights of users at risk around the world. Through representation around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organisation, Access Now routinely engages with the United Nations in support of our mission to extend and defend human rights in the digital age.¹

Zaina Foundation is a non-governmental, non-profit sharing organization which was founded in 2017 and registered under NGO's Act of 2002 with the aim of promoting digital rights in Tanzania. Zaina Foundation's vision is to empower women in technology through digital security and privacy capacity building, workshops and training. This is done through providing capacity building of digital security training to women and human rights defenders in Tanzania, localization of digital tools and content where we translate open source tools in Swahili language in order to allow Swahili users to access secured tools for their communication. Additionally, Zaina Foundation monitors internet shutdowns in Tanzania and through its UX Project the organization collects feedback from end users during training and shares them with developers, in the quest to help improve the tools friendlier for users.²

I. Introduction

1. The Universal Periodic Review (UPR) is an important UN mechanism aimed at addressing human rights issues across the globe. Access Now and Zaina Foundation welcome the opportunity to contribute to the United Republic of Tanzania's (Tanzania's) third review cycle.
2. This submission examines the state of digital rights in Tanzania, including freedom of expression, access to information, and the right to privacy. Specifically, this submission

¹ Access Now, *About Us*, 2021, <https://www.accessnow.org/>.

² Zaina Foundation, *About Us*, 2021, <https://zainafoundationtz.org/>.

raises concerns regarding internet shutdowns amid the recent 2020 Presidential election, and internet censorship through the former (2018) and new (2020) Electronic and Postal Communications (Online Content) Regulations, as well as cyber laws and regulations which infringe freedom of expression and limit civic space in Tanzania.

II. Follow up from previous review

3. This is the third review for Tanzania, last reviewed in May 2016 and October 2011 respectively. During the second UPR, Tanzania received a total of 229 recommendations, of which 133 were accepted and 96 were noted.³ Tanzania accepted the recommendation to “address concerns related to claims of interference with freedom of expression.”⁴ No recommendations explicitly addressed the right to privacy. The right to freedom of expression and access to information, and the right to privacy remain priority issues for Tanzania.

III. International, regional, and domestic human rights obligations

4. Tanzania is a signatory to the Universal Declaration of Human Rights (UDHR), and has ratified the ICCPR, but has not signed onto its Optional Protocols.⁵ Tanzania has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).
5. Tanzania is signatory to the African Charter on Human and Peoples’ Rights (ACHPR). Article 9 of ACHPR provides for the rights of freedom of expression and access to information, stating “every individual shall have the right to receive information,” as well as “the right to express and disseminate his [sic] opinions within the law.”
6. Part III of the Constitution of the United Republic of Tanzania of 1977 establishes basic rights and duties. Among other articles, Article 12 provides for equality of human beings, Article 13 equality before the law, Article 14 right to life, Article 15 rights to personal freedom, Article 16 rights to privacy and personal security, Article 17 right to freedom of movement, Article 18 rights to freedom of expression, Article 20 freedom of association etc. Therefore, with the purpose of complying to its international law, Tanzania protects freedom of expression in Article 18 while freedom of association is clearly provided in Article 20 of the United Republic of Tanzania Constitution of 1977 as amended from time to time. However, the Constitution of the United Republic of Tanzania of 1977 as amended from time to time is yet to provide for the rights of data protection and privacy, although Article 16 provides for the general rights to privacy and personal security. Article 30 of the Constitution of the United Republic of Tanzania poses the limitations upon enforcement and preservation of basic rights freedom and duties.

IV. Freedom of expression, access to information, and the right to privacy

³ UPR-Info, *2RP Responses to Recommendations & Voluntary Pledges: United Republic of Tanzania*, 2016 https://www.upr-info.org/sites/default/files/document/tanzania_united_republic_of/session_25_-_may_2016/recommendations_and_pledges_tanzania_2016.pdf.

⁴ UPR-Info, *2RP Responses to Recommendations & Voluntary Pledges: United Republic of Tanzania*, 2016 https://www.upr-info.org/sites/default/files/document/tanzania_united_republic_of/session_25_-_may_2016/recommendations_and_pledges_tanzania_2016.pdf at Recommendation A-134.96.

⁵ OHCHR, *Status of Ratification Interactive Dashboard*, 2021, <https://indicators.ohchr.org/>.

Internet shutdowns amid Tanzania's presidential election

7. While 2020 marked the first time Tanzania has shut down the internet, the government's callous action did not surprise the human rights community. For the past few years, Tanzania has restricted freedom of expression online and off, targeting vulnerable groups like the LGBTQ+ community with harassment, arbitrary arrests, and persecution.⁶
8. Access to the internet and digital communication tools enable people to gain information and stay informed on election processes, engage in public discourse, and hold elected leaders to account. Disconnecting a nation in times of high tension – as through internet shutdowns – can be incredibly dangerous, adding frustration and confusion to political discord. It is therefore imperative that the people of Tanzania can access open and secure internet and digital communications platforms at all times.
9. In the lead-up to the presidential elections on 28 October 2020, authorities took a series of actions to restrict the digital rights of the Tanzanian people.⁷ On 24 October, 2020, the Tanzania Communication Regulatory Authority (TCRA) ordered telco service providers to suspend access to bulk short messaging services (SMS) and bulk voice services. The government specifically installed equipment that would enable authorities to censor content and throttle the internet.⁸ Access Now and the #KeepItOn Coalition — a coalition of more than 240 organizations from 105 countries around the world dedicated to fighting internet shutdowns — also received reports that individual text messages with election-related keywords were blocked with threats of more expansive internet blocking.⁹

⁶ Access Now for the #KeepItOn Coalition, *Shattered Dreams and Lost Opportunities A year in the fight to #KeepItOn*, 2021, https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf

⁷ Access Now, *Tanzania is weaponizing internet shutdowns. Here's what its people have to say*, 2020, <https://www.accessnow.org/tanzania-internet-shutdowns-victim-stories/>

⁸ Tanzania Communication Regulatory Authority, 21 October 2021. *Directive on Temporal Suspension of Bulk Messaging and of Bulk Calling Services*, retrieved 22 January 2021.

⁹ Access Now, *Tanzania government censoring mobile networks ahead of presidential election*, 2020, <https://www.accessnow.org/tanzania-censoring-mobile-networks-before-election/>
#KeepItOn, *Open Letter to President John Magufuli and TCRA Director James Kilaba: Tanzania Must #KeepItOnTz during the Presidential Election*, 2020, https://www.accessnow.org/cms/assets/uploads/2020/10/KeepItOn_-_Open-letter-urging-the-government-of-Tanzania-to-keep-the-internet-open-and-secure-during-presidential-elections.pdf

10. On 27 October 2020, media reports and evidence gathered by the Open Observatory of Network Interference (OONI) suggested that Twitter, WhatsApp, and, potentially, Telegram were blocked.¹⁰ It was later verified that the TCRA, acting under the Magufuli government, forced telecom and internet service providers to install internet filtering equipment from the Israeli firm Allot, and then deliberately disrupted Twitter, WhatsApp, and Telegram one day before the election.¹¹
11. On 28 October 2020 — election day — people reported internet disruptions, mainly through the government telecom service provider.¹²
12. As of the date of this submission, Twitter is still inaccessible in Tanzania without a VPN. Access Now collected stories from victims detailing the harm to people’s ability to work, study, and organize.¹³
13. Disrupting key digital communications platforms ahead of elections underscores the government’s deliberate attempt to stifle the rights of the Tanzanian people, and its disregard for democratic processes. Internet shutdowns violate fundamental human rights such as freedom of expression and opinion, access to information, press freedom, and the freedom of assembly. The international community is committed to opposing internet shutdowns, and provides evidence that shutdowns are a violation of international human rights law. For instance, in 2020, the UN Human Rights Council issued a resolution on the right to freedom of opinion and expression “strongly condemn[ing] the use of internet shutdowns to intentionally and arbitrarily prevent or disrupt access to or dissemination of information online” and called on governments to refrain from such acts.¹⁴ Further, experts from the United Nations, Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS), and the African Commission on Human and Peoples’ Rights declared¹⁵ that internet “kill switches” can never be justified under international human rights law, even in times of conflict.¹⁶

¹⁰ Access Now, *As Tanzania votes, government forces telecom companies to escalate censorship*, 2020, <https://www.accessnow.org/tanzania-votes-government-forces-telcos-escalate-censorship/>

¹¹ Access Now, *Tanzania is weaponizing internet shutdowns. Here’s what its people have to say*, 2020, <https://www.accessnow.org/tanzania-internet-shutdowns-victim-stories/>

¹² Access Now for the #KeepItOn Coalition, *Shattered Dreams and Lost Opportunities A year in the fight to #KeepItOn*, 2021, https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf

¹³ Access Now, *Tanzania is weaponizing internet shutdowns. Here’s what its people have to say*, 2020, <https://www.accessnow.org/tanzania-internet-shutdowns-victim-stories/>, Access Now for the #KeepItOn Coalition, *Shattered Dreams and Lost Opportunities A year in the fight to #KeepItOn*, 2021, https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf

¹⁴ UN Human Rights Council, *Freedom of opinion and expression*, 2020, UN Doc A/HRC/RES/44/12, <https://undocs.org/en/A/HRC/RES/44/12>.

¹⁵ Article 19, *Joint Declaration on Freedom of expression and the internet*, 2015, <https://www.article19.org/resources/joint-declaration-freedom-expression-internet%20/>

¹⁶ Access Now, *Internet kill switches are a violation of human rights law, declare major UN and rights experts*, 2015, <https://www.accessnow.org/internet-kill-switches-are-a-violation-of-human-rights-law-declare-major-un/>

14. By disrupting the free flow of information during elections, shutdowns exacerbate any existing tensions in a society and increase the likelihood of protests. They can also serve to obscure violence and human rights violations perpetrated by governments or other actors. Without access to communications tools, voters are blocked from full participation in electoral processes, human rights defenders cannot document violations, international observers cannot monitor the elections closely, and journalists and the media are unable to report on the election process and outcomes.¹⁷
15. The evidence shows that Tanzania installed “deep packet inspection” (DPI) technology, powerful tools allowing operators to surveil and disrupt internet communications, before elections that challenged their hold on power, indicating that the ensuing censorship and internet shutdowns were premeditated. This is the latest development in a series of government actions to undermine digital rights in the country.

Internet censorship: The Electronic and Postal Communications (Online Content) Regulations of 2020 and 2018

16. The government of Tanzania introduced new regulations in an attempt to restrict people’s access to blocked websites and social media apps, prohibiting use or distribution of tools that let people access censored content and restricting people’s capacity to stay anonymous online.¹⁸
17. On 17 July, 2020, Tanzania revoked the draconian Electronic and Postal Communications (Online Content) Regulations of 2018. The government nonetheless replaced the 2018 regulation with the Electronic and Postal Communications (Online Content) Regulations of 2020,¹⁹ which enables the same kind of harmful internet censorship in Tanzania. Numerous civil society organizations and individuals have pointed out the flaws in the previous regulation, while others have provided analyses of

¹⁷ Access Now, *How internet shutdowns are threatening 2020 elections, and what you can do about it*, 2020, <https://www.accessnow.org/internet-shutdowns-2020-elections/>

¹⁸ Access Now for the #KeepItOn Coalition, *Shattered Dreams and Lost Opportunities A year in the fight to #KeepItOn*, 2021, https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf

¹⁹ Gazette of the United Republic of Tanzania, No. 29 Vol. 101 *The Electronic and Postal Communications (Online Content) Regulations*, 2020, dated 17 July, 2020, [https://www.tcra.go.tz/document/The%20Electronic%20and%20Postal%20Communications%20\(Online%20Content\)%20Regulations,%202020](https://www.tcra.go.tz/document/The%20Electronic%20and%20Postal%20Communications%20(Online%20Content)%20Regulations,%202020).

the many problems with the new regulation.²⁰ Overall, these findings suggest that the new regulation stifles Tanzanians' freedom of expression, restricts their access to information, and interferes with their right to privacy, while also enabling the government to profit from ratcheting up online censorship and control.

18. The new regulation consolidates and strengthens the government's powers to implement internet censorship in Tanzania. The single notable positive change is that the new law limits regulation of online content to public content, instead of covering content transmitted via private communications such as private emails or text messages. Nonetheless, similar to the old regulation, the new regulation is in conflict with Tanzania's international human rights obligations. Overall, the new regulation increases the risks and cost of speaking freely online because the regulation:

- a. **Expands the list of prohibited content:** The regulation has added to the list of prohibited content, while also retaining old terms. For instance, social media content calling for protests has recently been made illegal while items such as sharing "evil content," or promoting "sorcery" online have been retained. Since these terms are inherently vague, and the definitions of the terms overly broad, they create a space for abuse of the law to censor speech.
- b. **Requires onerous registration and expensive licenses:** Similar to the old regulation, the new regulation requires bloggers and other content providers to register and pay expensive licensing fees for publishing content online, in conflict with international human rights laws and norms. Content providers used to be able to register and get a single license to offer different types of content, but now they are required to obtain numerous permits based on the content they offer, and can incur exorbitant licensing fees. For instance, if a provider has a YouTube channel that offers both entertainment and news coverage, they would be required to get two licenses, unless one type of content exceeds 85% of what they offer on a weekly basis. This new requirement forces providers to limit their content or pay more. It's not necessary to enact a "telecom" or "broadcast" style licensing regime like this, and imposing these kinds of fees will ultimately have a negative impact on both free expression and the open internet.²¹

²⁰ See e.g. Ubena John, *The bolts and nuts of online content regulation in Tanzania*, 17 December 2019, <https://www.tandfonline.com/doi/full/10.1080/13600834.2020.1705034?needAccess=true&>, Article 19, *Tanzania: Electronic and Postal Communications (Online Content) Regulations 2018*, April 2018 <https://www.article19.org/wp-content/uploads/2018/05/Tanzania-Online-Content-Regulations-2018-Final.pdf>, Media Council of Tanzania, *Analysis of the Electronic and Postal Communications (Online Content) Regulations 2020*, 2020, <https://mct.or.tz/wp-content/uploads/2020/08/EPOCA-Online-Content-Regulations-2020-Analysis.pdf>, Edrine Wanyama, *Tanzania Entrenches Digital Rights Repression Amidst COVID-19 Denialism and a Looming Election*, CIPESA, 19 August 2020, <https://cipesa.org/2020/08/tanzania-entrenches-digital-rights-repression-amidst-covid-19-denialism-and-a-looming-election/>.

²¹ Access Now, *Proposals for Regulating Internet Apps and Services: Understanding The Digital Rights Impact of the "Over-the-Top" Debate*, 2017 https://www.accessnow.org/cms/assets/uploads/2017/08/Access_Now_OTT-position%E2%80%93paper.pdf

- c. **Imposes harsh criminal penalties for speech acts:** The government used the previous legislation to penalize and censor online media outlets and to harass and arrest bloggers.²² The new law punishes those found guilty of violating its overly broad and vague provisions with severe fines and penalties. For example, a blogger could face a more than 5 million shilling fine (approximately \$2,150) and/or serve a year in prison. This makes exercising the right to free expression a dangerous and potentially extremely expensive act.
- d. **Interferes with the right to privacy and anonymity:** The current regulation carries forward the negative privacy implications of the previous regulation, then adds to the risks. The owners of internet cafes are still required to install surveillance cameras and acquire static IP addresses for computers, and patrons are required to register their identity, and the information can then be kept on record for a year. Those with a license to provide content must use tools that identify the source of the content, a provision that hinders journalism and whistleblowing because people cannot guarantee their sources will be protected. The regulation also prohibits use or distribution of tools that allow people to access prohibited content, meaning that VPNs are effectively banned, restricting people's capacity to stay anonymous online. Requirements for mandatory registration and retention of personally identifiable information are not in line with the basic tenets of the rights to privacy and anonymity. In repressive contexts, when people do not have privacy, they are not truly free to speak.
- e. **Limits access to information online:** Taken as a whole, the new law will serve to limit access to information online. The government used the previous regulation to suspend licenses and punish numerous media organizations, as well as arresting intermediaries.²³ These experiences and the new regulation that reinforces the government's censorship powers will force media houses, intermediaries, bloggers, and others to self-censor, over-comply with the regulation, and ultimately limit the information they share, stream, and host.²⁴

19. Neither the previous nor the current regulation protects digital rights. The laws have not only strengthened the capacity for internet censorship in Tanzania, but also paved the

²² The Citizen, *COVID-19: Media fined for broadcasting against Tanzania's stance*, 2020, <https://www.thecitizen.co.tz/news/Covid-19--Media-fined-for-/1840340-5514540-ujukruz/index.html>, The Citizen, *TCRA suspends Mwanachi's online license for Six months*, 2020, <https://www.thecitizen.co.tz/news/TCRA-suspends-Mwananchi-s-online-license-for-Six-months/1840340-5527310-13ixgsgz/index.html>, Front Line Defenders, *Maxence M. Melo Arrested and Detained*, <https://www.frontlinedefenders.org/en/case/maxence-m-melo-arrested-and-detained>

²³ The Citizen, *Kwanza Online TV to appeal the 11-month suspension*, 2020, <https://www.thecitizen.co.tz/news/Kwanza-Online-TV-to-appeal-the-11-month-suspension/1840340-5591242-ptkxxdz/index.html>, Front Line Defenders, *Maxence M. Melo Arrested and Detained*, <https://www.frontlinedefenders.org/en/case/maxence-m-melo-arrested-and-detained>.

²⁴ The Citizen, *Challenging times for Tanzanian broadcasters*, 2020, <https://www.thecitizen.co.tz/news/Challenging-times-for-Tanzanian-broadcasters/1840340-5607112-q36mqbz/index.html>.

way for the country to become a surveillance state. The government is not only monitoring and tracking what people are saying online, it is also penalizing those who dare to speak out. When authorities are not able to punish Tanzanians for exercising their right to free expression, they are profiting from censorship.

VII. Recommendations

20. We urge that freedom of expression, access to information, and the right to privacy become prominent issues in the upcoming UPR review cycle. We therefore recommend that the government of Tanzania:
21. Refrain from shutting down the internet and blocking social media and make a state pledge to refrain from imposing any unlawful restrictions on internet access and telecommunication in the future, particularly in upcoming elections and protests, and amid the COVID-19 pandemic.
22. Ensure that the internet, including social media and other digital communication platforms, remain open, accessible, and secure across Tanzania. Tanzania should specifically:
 - a. Order internet service providers operating in Tanzania to provide everyone with high-quality, secure, and unrestricted internet access throughout election periods, protests and thereafter.
 - b. Order internet service providers operating in the country to inform internet users of any disruptions, and provide timely and transparent guidance to users to identify disruptions likely to impact the quality of service they receive.
23. Repeal or otherwise amend the Cyber Crimes Act 2015 on all vague defined offences in order to bring Tanzania's legal framework in line with its international human rights law obligations.
24. Call on the Minister of Information, Culture and Sport to repeal or otherwise amend laws and regulations that restrict freedom of expression, access to information and the right to privacy to bring them in line with international human rights law, including the Electronic and Postal Communications (Online Content) Regulations of 2020.
25. Refrain from pressuring tech companies, internet service providers or other telecommunications companies to moderate content online in contravention of the rights to free expression and access to information and ensure their compliance with their responsibilities to respect and protect human rights in line with the UN Guiding Principles on Business and Human Rights.

26. Repeal all licensing regimes and fees on bloggers and other content providers. Guarantee access for all persons in Tanzania to information, both online and offline, particularly where such information relates to the public interest, such as elections and the COVID-19 pandemic, and impacts upon the individual's right to public participation, including adopting a law to enable the provision of such access and ensure its proper functioning with appropriate administrative resources, support, and accessibility.
27. Fulfill Tanzania's international obligation to guarantee the right to equality and non-discrimination and refrain from restricting freedom of expression online and offline that specifically targets vulnerable groups, such as the LGBTQ+ community with harassment, arbitrary arrests, and persecution.
28. Ensure girls and women's human rights are adhered on digital platforms and punish all perpetrators of online gender-based violence to create a culture to deter future violence.
29. The UPR is an important UN process aimed at addressing human rights issues worldwide. It is a rare mechanism through which citizens around the world get to work with the government to improve human rights and hold them accountable to international law. Access Now and Zaina Foundation are grateful to make this submission.

For more information, please contact: un@accessnow.org & info@zainafoundationtz.org