



THE CYBER LAW AND FREEDOM OF EXPRESSION: THE TANZANIAN PERSPECTIVES

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Freedom of Expression

- first session in 1946, before any human rights declarations or treaties had been adopted, (UNGA) adopted resolution:

“Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”

- UNGA, Resolution 59(1) of 1946

Freedom of Expression

- UDHR 1948, Art. 19 says;

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

Freedom of Expression

- Constitution of United Republic of Tanzania, 1977

“Every person

(a) has a freedom of opinion and expression of his ideas;

(b) has a right to seek, receive and, or disseminate information regardless of national boundaries;

(c) has the freedom to communicate and a freedom with protection from interference from his communication; and

(d) has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.”

Freedom of Expression



Search

Receive

Disseminate

Freedom of Expression



Search

Receive

Disseminate

1995

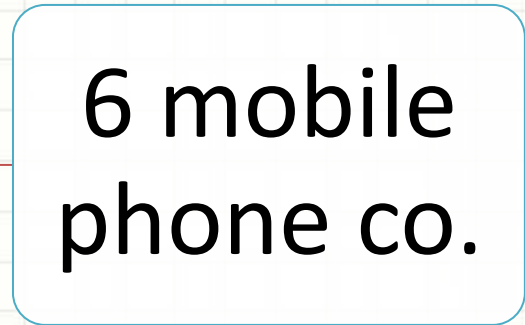
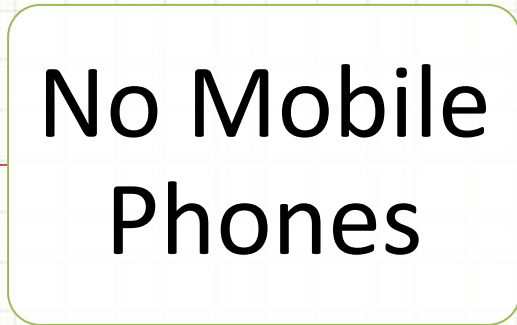
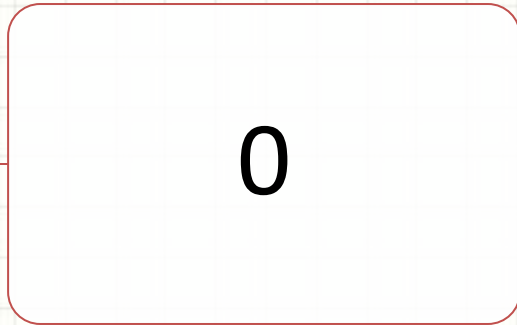
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No Mobile
Phones

2015

32m

6 mobile
phone co.



CYBER CRIME



Cyber crime



Historical

Spam, virus, hacking

Child porno

offences online

Cyber crime Laws in Tanzania

1

- Cyber Crime Act, No. 4 of 2015

2

- Electronic and Postal Communications Act, No. 3 of 2010

3

- Electronic Transaction Act, No. 6 of 2015

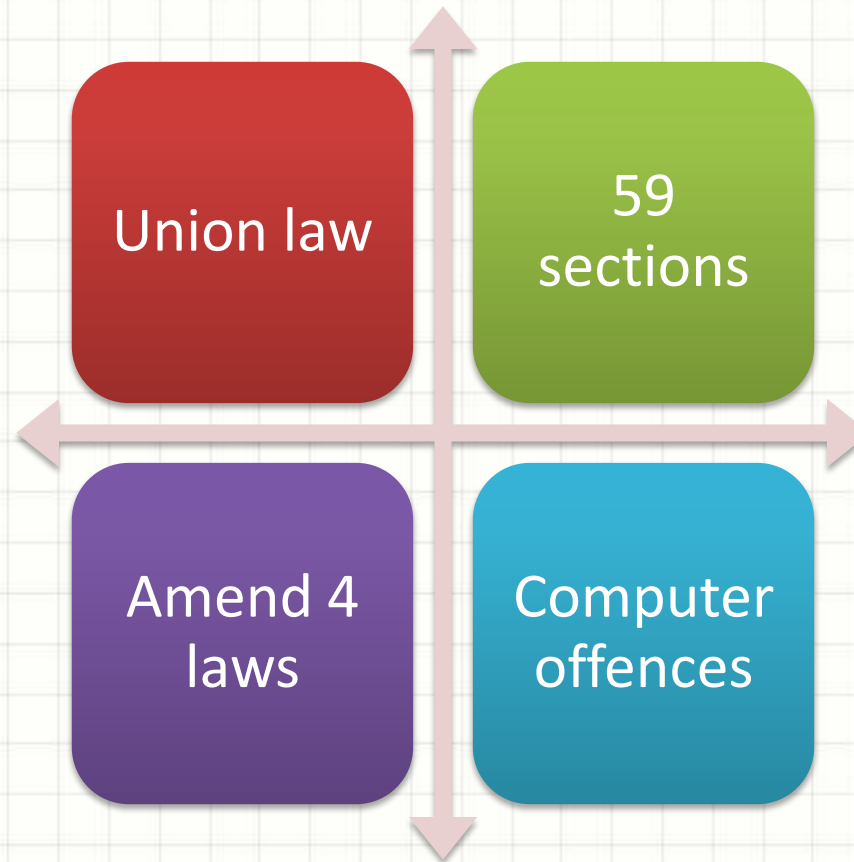
THE LAW COVERS

- Child Pornography,
- Incitement to commit suicide,
- Racist Materials,
- invasion of the privacy,
- illegal access,
- illegal interception,
- data interference,
- system interference,

THE LAW COVERS:

- misuse of devices ,
- forgery,
- fraud,
- offences related to child pornography, identity theft
- and other most serious crimes on social networks of global concern

CYBER CRIME ACT, 2015



FREEDOM OF EXPRESSION

- Applies in the internet
- Restrictions must be in accordance with international standards
- Provided by the the law
- Protecting interests recognized by international law

PERMISSIBLE RESTRICTIONS


- Child Pornography
- Incitement to commit suicide
- Racist Materials

QUESTIONABLE RESTRICTIONS

- S. 8 Data Espionage
- What if used for investigative journalism, research or other legitimate use?

Pornography s.14

- Different from child porno
- Free choice of an adult
- Not prohibited under international law



Publication of false, deceptive,
misleading, or inaccurate information,
data or facts s.16

- Replica of NPA
- Information, data and facts from political elections
- Bloggers, whatsapp, online media be aware

Unsolicited Message S.20

20.-(1) A person shall not -

(a) initiate the transmission of unsolicited messages;

(b) relay or retransmit unsolicited messages ,
or

(c) falsify header information in unsolicited messages.

Unsolicited message

2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than three million shillings or three times the value of undue advantage received, whichever is greater or to imprisonment for a term of not less than one year or to both.

(3) For the purpose of this section, “unsolicited messages” means any electronic message which is not solicited by the recipient.

Part iv- Search and Seizure

- Computer or any device
- Cellphones, ipads, notebooks etc
- Police officer incharge of police station
or
- Any law enforcement office
- May search and seize in accordance with
the law

Disclosure of the data s.36

- May mean disclosure of the source for the media.
- Intrusion to the privacy

Liability of Service Provider – Part V

- Service providers
- Access provider
- Catching provider
- Hyper link provider
- Search engine provider
- Duty to monitor
- Take Down notice

Forfeiture of the Property

- Property
- Traceable proceeds
- Compensation
- Surrender of travelling documents

CRITICAL ISSUES

International std

Criminalizing FE

Same as NPA

Beyond Media

5th Estates

STANDARDS

- CONSTITUTION
- ICCPR
- ACHPR
- COMMISSION ON HPR
- AFRICAN COURT ON HPR

END

- NEEDS TO INVOLVE STAKEHOLDERS
- RESPECT INTERNATIONAL STANDARDS
- ALLOW FREEDOM OF EXPRESSION
- INTERNET IS HUMAN RIGHTS

Cyber Freedom: the wrath of EPOCA

1

- Cyber security, Interception, Encryption and Data Retention

2

- Disclosure of Information to the authority

3

- No data protection legislation

Cyber Freedom: the wrath of EPOCA

4

- 44 offences (ss.116-160)

5

- Uncertain offences

6

- Wide discretionary powers

Cyber Freedom: the wrath of EPOCA

7

- Harsh penalties

8

- Minimum US\$ 1,500, 3yrs, both

9

- Chilling effects to FE

Cyber Freedom and IPR

- Not allowed to use a cyber system to violate IPR protected under any written law.
- While it is good to legally protect IPR, the same should not violate freedom of expression.
- Section 24 of the Cyber Crime Act, 2015

CSO ACTION

- “threats to free and open expression online”
- Case No. 32/2015, High Court- DSM,
- Sections 31,33,34,35 and 37 which give powers to police to search users of online data in the absence of a court order,
- Article 16 of the constitution URT 1977
- Till now the matter is *sub-judice*.

THANK YOU

ASANTE

