

LIBERIA'S RESPONSE TO THIRD STUDY COMMISSION QUESTIONNAIRE 2022

Question 1:

Does your country protect freedom of speech and, if so, how? Please refer to legislation, including any applicable bill of rights or charter of rights or human rights code, as examples, and /or jurisprudence (court decisions) as an overall picture.

Answer:

Yes, our country, Liberia, protects freedom of speech.

The Constitution of Liberia protects freedom of speech. Precisely, Chapter III, Article 15 of the 1986 Constitution of Liberia protects freedom of speech. The said Article provides:

- a) Every person shall have the right to freedom of expression, being fully responsible for the abuse thereof. This right shall not be curtailed, restricted or enjoined by government save during an emergency declared in accordance with this Constitution.
- b) The right encompasses the right to hold opinions without interference and the right to knowledge. It includes freedom of speech and of the press, academic freedom to receive and impart knowledge and information and the right of libraries to make such knowledge available. It includes non-interference with the use of the mail, telephone and telegraph. It likewise includes the right to remain silent.
- c) In pursuance of this right, there shall be no limitation on the public right to be informed about the government and its functionaries.
- d) Access to state owned media shall not be denied because of any disagreement with or dislike of the ideas express. Denial of such access may be challenged in a court of competent jurisdiction.
- e) This freedom may be limited only by judicial action in proceedings grounded in defamation or invasion of the rights of privacy and publicity or in the commercial aspect of expression in deception, false advertising and copyright infringement.

The above quoted article of the Liberia Constitution is unambiguous in stressing an individual's right to freedom of expression, be it in speech or through writing. It goes further to give every person within the borders of Liberia the right to hold thoughts of his/her own. Note that Article 15 of the Liberian Constitution is in agreement with Article 19 of the United Nation's Universal Declaration of Human Rights, to which Liberia has acceded, and it states: "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 ideas through any media and regardless of frontiers." However, the above quoted article of the Liberian Constitution expands on those rights of an individual that could be considered as freedom of expression, to include the right to access information about the workings of Government and other organizations that use public funding or public interest. Moreover, the framers of the Liberian Constitution reveal how much importance is being attached to freedom of speech and expression by including this right under Chapter III of the Constitution captioned "Fundamental Rights", meaning this is an essential right that every individual in Liberia possesses and must not be denied.

In an effort to ensure that freedom of speech is protected, the Supreme Court of Liberia has rendered several opinions over the years upholding freedom of speech and expanding on this necessary right further. In the case "In re Contempt Proceedings against Sieh (Front Page), the Supreme Court stressed that from the founding of the Republic of Liberia, freedom of speech has always been considered an essential right to mankind. The Supreme Court referred to Section 15 of the 1847 Constitution of Liberia, which reads, inter alia:

"The liberty of the press is essential to the security of freedom in a state it ought not, therefore, to be restrained in this Republic..... The free expression of thoughts and opinions is one of the invaluable rights of man, and every citizen shall freely speak, write and print on any subject being responsible for the abuse of that liberty...." . [2011] LRSC 10 (21 January 2011)

Further to this, as early as 1861, in rendering its opinion in the case *Dennis v. Bowser* (*Dennis v. Bowser*, 1 LLR (Liberian Law Reports) 5, (1861), the Supreme Court of Liberia opined:

"The Constitution and statute laws [of Liberia] regard with sacred jealousy the right of "free speech" the full expression of those words and expressions which are necessary to convey our ideas and feeling and meaning to each other. It is a privilege that no jury in the land, nor court, has the right to suppress or circumscribe." *Ibid.* 7.

The several opinions of the Supreme Court of Liberia referred to above present how sacrosanct the said court and people of Liberia hold an individual's right to freedom of speech and expression. This is an invaluable right that every civilized nation must subscribe to, and Liberia, being a part of the comity of nations, is of no exception.

Question 2:

Does your country criminalize hate speech and, if so, how? Please refer to legislation and/or jurisprudence as an overall picture.

Answer:

No, Liberia has not criminalized hate speech. However, Chapter 14, Section 14.27, paragraphs (b) and (c) of the Penal Law of Liberia, Title 26 of the Liberian Code of Laws Revised, in some manner, speaks to hate speech. The said law provides:

§ 14.27. Criminal coercion.

1. Offense. A person is guilty of criminal coercion if, with the purpose unlawfully to compel another to engage in or refrain from conduct, he threatens to:

- (a) Commit any criminal offense; or
- (b) Accuse anyone of a criminal offense; or
- (c) Expose any secret or publicize an asserted fact tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute.

2. Defense. It is an affirmative defense to prosecution based on paragraphs (b) or (c) of paragraph 1 that the actor believed the accusation or secret or asserted fact to be true and that his purpose was limited to compelling the other to behave in a way of the accusation or exposure as by desisting from further misbehavior, making good a wrong done, or refraining from taking any action or responsibility for which the actor believes the other disqualified.

3. Grading. Criminal coercion is a misdemeanor of the first degree unless the threat is to commit a felony, in which case the offense is a felony of the third degree.

Question 3:

Does your country have restrictions by the criminal law of the freedom of speech? And if yes, could you give an overall picture of what the legislation is like? Including:

- Are there groups of persons who enjoy special protection of their freedom of speech due to their gender, sexual preference, religion, race or other conditions?
- Are there topics that enjoy special protection in terms of freedom of speech – for example topics of religion and politics?

Answer:

No, Liberia does not have restrictions by the criminal law on the freedom of speech. Rather, one who is offended by the speech of another can proceed against the alleged offender in a civil action either by an action for libel, deformation, slander, etc.

- There are no groups of persons in Liberia who enjoy special protection of their freedom of speech due to their gender, sexual preference, religion, race or other conditions.
- There are no topics in Liberia that enjoy special protection in terms of freedom of speech.

Question 4:

If there are restrictions in the criminal law of the freedom of speech, are the restrictions then absolute or must they be weighed against the consideration of free speech?

- Does this apply to all groups and if not, are the restrictions either absolute or not? Please mention which persons and groups belong to which category.
- In cases where the freedom of speech and the restrictions are to weighed against each other –
 - Are there then guidelines on how the balancing should be done?
 - If yes, which of the two parameters weighs heaviest, a) the protection of free speech or b) the category that is protected by the legislation? And does this differ from category to category?
 - And how much discretion is there such that the outcome of the balancing exercise may differ from judge to judge?

Answer:

Under the laws of Liberia, there are no restrictions in the criminal law of the freedom of speech. Paragraph “a”, Article 15, Chapter III of the 1986 Constitution of Liberia states that all persons within Liberia have the right to speak freely, but the person speaking will be fully responsible for the abuse of that right. Hence, a person who feels offended by what is spoken has the right to institute a civil action against the alleged offender.

Question 5:

Do you find that the legislation is clear and comprehensible to the citizen or does it give cause for doubt?

- If it gives cause for doubt, how is it expressed? Does it deter the citizen from making statements? Or does it deter citizens from suing?

Answer:

It is worth restating that the laws of Liberia do not criminalize hate speech. The 1986 Constitution of Liberia dictates that all persons in Liberia have a right to freedom of speech. However, the referenced section of the Liberian Constitution clarifies that persons exercising their right to freedom of speech shall be held responsible for the abuse of this freedom.

The words of Article 15 (a) of the Liberian Constitution are clear, comprehensible and do not give cause for doubt. Even a lay man is expected to comprehend that he/she will be held liable if the right to freedom of speech is used to infringe on the rights of others.

The laws of Liberia encourage citizens to exercise their right to freedom of speech responsibly by refraining from infringing on the rights of others. They do not deter the citizen from making statements; rather, they encourage citizens to make use of the courts by suing those who abuse their right to freedom of speech.

Question 6:

Do you find in your work as a judge that the relevant legislation in your country, as it pertains to the freedom of speech and its protection and the criminalization of hate speech, is clear and comprehensible, or do you find that it gives too much room for different outcomes in the same types of cases?

Answer:

As Judges, we have realized that Liberia has not criminalized hate speech so there is no criminal law on hate speech to determine whether it is clear and comprehensible. However, the organic law of Liberia, the 1986 Constitution, protects freedom of speech but sets a restriction on the exercise of that freedom. The Supreme Court has emphasized this principle while rendering opinions in a litany of case.

Speaking on the issue of freedom of speech and the restriction provided by law, in the case *Dennis v. Bowser*, the Supreme Court said: "It would be dangerous in the extreme, to allow the least intrusion upon so sacred a right of free speech and privilege, especially when the constitution declares that "...every citizen shall freely speak, write and print on any subject, being responsible for the abuse of that liberty." (*Dennis v. Bowser*, 1 LLR (Liberian Law Reports) 5, 6 (1861))

In the same case, the Supreme Court cautioned citizens against using their right to freedom of speech against others maliciously in the following manner: "It is true that if malice is deceptively screened under, and these privileges and rights thus granted be used as a cloak, and other motives are the imprompter, the law fairly demands the proof, in the way and manner provided, and if true, will give speedy and wholesome remedy,....." (*Dennis v. Bowser*, 1 LLR (Liberian Law Reports) 5, 6 (1861))

Further to the opinions quoted above, Mr. Chief Justice James A. A. Pierre said, and so we speak and affirm today that: "freedom of speech should not be interpreted as license to exceed the constitutional liberties a citizen should enjoy." Chief Justice Pierre continued by quoting Chancellor Kent as stated: "...that the liberty of the press consists in the right to publish with impunity, truth, with good motives, and for justifiable ends, whether it respects government, magistracy, or individuals". But the Chief Justice wittingly observed: "Too often some of us are wont to use this constitutional privilege from motives other than could be called good, and for ends far removed from justifiable; therefore the Constitution has made the use of the privilege subject to personal responsibility for its abuse." *In re C. Abayomi Cassell* [1961] LRSC 22; 14 LLR 391, 428 (1961).

In the above quotations, it can be visualized that the Supreme Court over time has constantly made it clear and comprehensible to citizens as well as other residents of Liberia that their right to freedom of speech is highly protected under the Liberian law. However, the Supreme Court has not reneged on its duty to also clarify that the freedom of speech guaranteed under the Constitution is not absolute.

Meanwhile, in further interpreting Article 15 of the 1986 Constitution of Liberia, the Supreme Court has not restricted its opinions to freedom of speech. It has extended its opinions to freedom of the press and the relevant restriction on what a journalist is free to write about others and the Court. Speaking for the Court in a contempt proceeding captioned, *In re C. Abayomi Cassell*, Mr. Chief Justice James A. A. Pierre concurred with a reception statute from the United States of America and opined:

"Freedom of speech and of the press does not, however, include the right to attempt, by wanton defamation, to prejudice the rights of litigants in a pending cause, degrade the tribunal, and impede, embarrass or corrupt the due administration of justice." 11 AM JUR, Constitutional Law, section 320 (1937).

We subscribe to the common law view that "freedom of speech does not include the right to speak to prejudice the rights of parties whose case is pending before a court of law; for to do so, in our opinion, could and indeed has the tendency to embarrass and more likely than not, corrupt

the due administration of justice." In re C. Abayomi Cassell [1961] LRSC 22; 14 LLR 391 (1961).

Still dwelling on freedom speech and freedom of the press, the Supreme Court of Liberia has, in various opinions, clearly pointed out, in a comprehensible manner, that when the press abuses its right to freedom of speech (freedom of the press), there should be proportional punishment meted out to ensure a wholesome functioning society. In the case, In re New Patriot Journal, which was a contempt proceeding against a newspaper, the Supreme Court rationalized that "Legal punishment for abuse of freedom of speech or press is necessary for the preservation of peace and good order of government and religion, the only foundation of civil liberty." In re New Patriot Journal [1995] LRSC 16; Syl. 4; 37 LLR 834 (1995) (17 February 1995)

In the same opinion, the Court gave reasons why journalists must publish the facts concerning matters pending before the courts. In this regard, the Supreme Court cautioned the press and the general public in the following manner: "Let it go forth to all to whom it may concern especially to the print and broadcasting journalists, who may rely on the constitutional provision of freedom of speech and of the press, to be careful not to look at the personalities of the individuals who compose the Supreme Court, but to realize that the Supreme Court is an institution which every citizen and resident is bound to respect and honor because it is the custodian of our liberty; it is the last place of hope on earth for every resident of this country and any act done by any individual or a group of individuals tending to degrade and ridicule the court or any of the Justices thereof, affects the dignity and integrity of the Liberian Judiciary, both nationally and internationally." In re New Patriot Journal [1995] LRSC 16; 37 LLR 834 (1995) (17 February 1995). This point made by the court was summarized in the following manner: "Freedom of speech and of the press as guaranteed by the Constitution should not be interpreted as a license for anyone to exceed the constitutional liberty a citizen should enjoy." (Syl. 7, 37 LLR 834) (1995)

The Supreme Court of Liberia, in past and present times, have continued to emphasize to its citizens, with clarity, that the right to freedom of speech is an essential tenet of democracy, and it has a duty to uphold same, but all persons will be held responsible for the abuse thereof. In the case In re Contempt Proceedings against Kamara (New Democrat), the Supreme Court reiterated this principle as follows: "The right to freedom of speech is a valuable right of the people and an essential tenet of democracy. While our Constitution recognizes this and thus gives right to everyone to speak freely, the speaker is held responsible, if what he/she speaks injures another person, group of persons or an institution, as the case may be. Freedom of speech, therefore, is not unlimited. And the limit is imposed by the Constitution itself when it places responsibility of the abuse of free speech on the speaker, and empowers the judiciary to take appropriate step(s) "... by judicial action in proceedings grounded in defamation..." In re Contempt Proceedings against Kamara (New Democrat) [2008] LRSC 21 (18 December 2008)

Conclusion:

We hope that with the above answers to your inquiry, there has been sufficient clarity provided your Commission concerning "Restrictions on the freedom of speech". Let us re-emphasize that the laws of Liberia do not criminalize speech or hate speech. Rather, Article 15 of the 1986 Constitution of Liberia provides for freedom of speech and freedom of the press. However, in past times, the government of Liberia criminalized speech in particular situations to embarrass political opponents, as well as media institutions considered anti-government. Some of the frivolous charges were sedition and criminal malevolence. However, in July 2012, former President Ellen Johnson Sirleaf became the second African head of state to endorse the Declaration of Table Mountain which calls on African governments to abolish criminal defamation laws. In an effort to have this international instrument domesticated, the Press Union of Liberia (PUL) had pressured the Sirleaf Administration in submitting a draft bill to the Legislature later that year that would move forward with the proposed decriminalization. A similar draft was submitted by the PUL and other media groups in December 2014. Unfortunately, no action was taken on the bill as of the end of 2014.

Fast forward, President George Manneh Weah on May 31, 2018 resubmitted the bill to the National Legislature with modifications, to repeal some sections of the Penal Law of Liberia in an effort to decriminalize free speech in order to create an "unfettered media environment."

Finally, on Thursday, February 28, 2019, President Weah Signed the KAK Act of Press Freedom into law.

It is worth noting that the Supreme Court of Liberia, through its opinions over the years, has emphasized that while the 1986 Constitution provides for freedom of speech and freedom of the press, those freedoms are not absolute. Every person, be it a journalist or an ordinary citizen must be punished for the abuse thereof. Notwithstanding, the envisaged punishment must be civil and not criminal.

Thank you for the opportunity afforded us to participate in this discourse.