

# **THE CHARTER FOR FREEDOM OF EXPRESSION AND OF THE PRESS IN SIERRA LEONE**

## **STATEMENT OF INTENT**

The struggle for freedom of expression and of the press is an ongoing commitment and it is fundamental to the survival of democracy and civilization in Sierra Leone. Not only is this freedom a bulwark and an antidote against every abuse of authority, it is society's lifeblood. Defending it day upon day is honouring our history and controlling our destiny. To these principles we are committed.

## **THE DECLARATION**

### **INTRODUCTION**

The **MAKENI DECLARATION** came into being in ..... 2016, which brought together journalists, academics, lawyers, civil society organisations and private citizens from throughout Sierra Leone to draft a document containing the 13 fundamental principles necessary for the media in Sierra Leone to perform its essential role in a democracy. This document draws inspiration from the Declaration of Chapultepec produced at the Inter American Press Association's Hemisphere on Free Speech held at the Chapultepec Castle, in Mexico City, in 1994.

The Makeni Declaration is also based on the essential precept that no law or act of government may limit freedom of expression or of the press, whatever the medium of communication.

The Declaration has been signed by heads of various media organisations, civil society groups and government representatives in Sierra Leone. It represents a commitment to the principle that a free press is necessary in order for societies to resolve their conflicts, promote well-being and protect their freedom.

The Press Freedom Committee of the Sierra Leone Association of Journalists (SLAJ) comprising experts in media law, media regulation, academics, heads of media groups, proprietors and editors, met in Bo, Southern Sierra Leone from the 21 to 23 January 2016, to develop the principles. They also met in Freetown at the SLAJ headquarters on the 28 January 2016 to reaffirm the 13 principles and interpret the spirit of the Declaration. As a result, the **Contributions to the Thirteen (13) Principles of the Makeni Declaration**, written by the SLAJ Press Freedom Committee, were re-examined and endorsed.

The Principles and the Contributions frame and define, in all its aspects, a freedom that is the origin, guarantor and custodian of all human rights.

## **PREAMBLE**

**ON THE THRESHOLD** of the production of a new Constitution for Sierra Leone, and in the light of campaigns against anti-press laws hindering media freedom, media practitioners envision a media environment rooted in democracy. We know that media institutions and practitioners have long suffered from the use of Criminal and Seditious Libel laws against them. The Truth and Reconciliation Commission (TRC), a product of the Lomé Peace Agreement of 7 July 1999 between the Government of Sierra Leone and the Revolutionary United Front (RUF), had looked at various thematic issues, including freedom of expression and of the press.

**IN THIS ENVIRONMENT OF DEMOCRATISATION**, the TRC had noted that “Freedom of expression is the lifeblood of a democracy. A culture of public debate and tolerance for dissenting ideas is the sign of a vibrant and healthy democracy. Restrictions on the freedom of expression represent a fearful State; it reflects a State that has no confidence in its ability to promote and disseminate its doctrines in the marketplace of ideas.”<sup>1</sup>

**AGREEING WITH THE TRC** that a free press ranks alongside an independent judiciary as one of the most important counter forces to the excesses of both the public and private sectors. The media should be free of political patronage. The degree to which the media is independent is therefore the degree to which it can perform an effective public watchdog function on the conduct of public officials and powerful individuals in society.

**KNOWING** that the TRC has specifically recommended that: “**the laws creating the offences of seditious and criminal libel should be repealed**”,

---

<sup>1</sup> Report of the Truth and Reconciliation Commission (2004) Vol. 2, Ghana: Graphics Packaging Limited (p.131)

and that this recommendation is among the imperative recommendations in the TRC report;<sup>2</sup>

**BEING AWARE** that the Human Rights Commission of Sierra Leone (HRCSL) has been calling on Parliament to repeal the Criminal and Seditious Libel laws, while the Independent Media Commission (IMC) had also requested that Sections 11 and 25 of the Constitution of Sierra Leone be reviewed alongside the Defamatory and Seditious Libel Laws in the Public Order Act;

**WE the media practitioners in Sierra Leone** have put together this document on press freedom, while also advocating for public freedoms and respect for all human rights in the country.

**We agree that “Without democracy and freedom”**, the results are predictable: Individual and social life is stunted, group interaction is curtailed, material progress is distorted, the possibility of change is halted, justice is demeaned and human advancement becomes mere fiction.

**We agree that “Freedom must not be restricted”** in the quest for any other goal. It stands alone, yet has multiple expressions. It belongs to citizens, not to government.

**Because we media practitioners in Sierra Leone** share this conviction, like those in Mexico in 1994 and other places; because we have faith in the creative force of our people and because we are convinced that our principles and goals must be freedom and democracy, we openly support their most forthright and robust manifestation: **Freedom of expression and of the press, whatever the medium of communication**. The exercise of democracy can neither exist nor be reproduced without these.

---

<sup>2</sup> See recommendation 79 of the TRC in Vol. 2, Chap 3, (p. 132)

**We, the signatories** of this declaration, firmly believe that a free society can thrive only through free expression and the exchange of ideas; the search for and the dissemination of information; the ability to investigate and question, to propound and react, to agree and disagree, to converse and confront, to publish and broadcast.

**We know that** not every statement and item of information can find its way into the media. We know that the existence of press freedom does not automatically guarantee unrestricted freedom of expression. But we also know that a free press favours an environment that nurtures freedom of expression and thereby benefits all other public freedoms.

**Without an independent media**, assured of the guarantees to operate freely, to make decisions and to act on them fully, freedom of expression cannot be exercised. A free press is synonymous with free expression.

**Wherever the media** can function unhindered and determine their own direction and manner of serving the public, there is a blossoming of the ability to seek information, to disseminate it without restraints, to question it without fear and to promote the free exchange of ideas and opinions. But wherever freedom of the press is curtailed, for whatever reasons, the other freedoms vanish.

**While defending a free press** and rejecting outside interference, we also champion a press that is responsible and involved, a press that is aware of the obligations that the practice of freedom entails.

## **THIRTEEN PRINCIPLES**

1. No people or society can be free without freedom of expression and of the press. The exercise of this freedom is not something authorities grant; it is an inalienable right of the people.
2. Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.
3. The credibility of the media is linked to its commitment to truth, to the pursuit of accuracy, fairness and objectivity and to the clear distinction between news and advertising. Therefore all journalists shall adhere to these principles.
4. Self-regulation is the desired goal of journalists. Therefore, the journalist association shall take steps to establish a credible disciplinary process to deal with violations of these principles.
5. The authorities must always be bound by law to make available in a timely and reasonable manner the information generated by the public sector.
6. No journalist shall be compelled to reveal their sources of information.
7. Freedom of expression and of the press can be severely limited by draconian laws, murder, terrorism, kidnapping, intimidation/threats, the destruction of facilities and property, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and dealt with according to the law.
8. Censorship, restrictions on the circulation of the media or dissemination of their reports, forced publication of information, the imposition of obstacles to the free flow of news, and restrictions on the activities and movements of journalists directly contradict freedom of the press. Public officials and members of the security forces shall therefore not engage in such activities.
9. The media and journalists should neither be discriminated against nor favoured because of what they write or say.
10. Tariff and exchange policies, licenses for the importation of newsprint or news-gathering and broadcast equipment, the assigning of radio and television frequencies and the granting or withdrawal of government advertising may not be used to reward or punish individual media institutions or journalists.

11. The membership of journalists in guilds, their affiliation to professional and trade associations shall be voluntary.

12. The mere threat of criminal prosecution and the possibility of a prison sentence serve to discourage people from speaking out. Therefore, no criminal prosecution shall be instituted against any proprietor, publisher, editor or any person responsible for any publication.

13. The public service broadcaster shall be truly independent and accountable to the people at all times.

## **CONTRIBUTIONS**

### **CONTRIBUTION TO PRINCIPLE ONE**

It is an essential value in human life for individuals to be able to express themselves, seek, disseminate and receive information with complete freedom.

Freedom of speech, freedom of the press and the right to information are individual rights, which belong to all: individuals, community and society, the latter viewed as the totality of the individuals. The absence of these freedoms therefore has a dual consequence: it violates an individual right and at the same time it leads to a society and a community without liberty. From this perspective, the violation of freedom of expression and of the press is a violation of democracy, the framework for provision of human rights.

The Constitution of Sierra Leone, Act No. 6 of 1991, guarantees freedom of expression and of the press. Section 25 (1) provides that “Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, freedom from interference with his correspondence, freedom to own, establish and operate any medium for the dissemination of information, ideas and opinions, and academic freedom in institutions of learning...”

However, Section 25 (2) of the same Constitution limits those freedoms “in the interests of defence, public safety, public order, public morality or public health; or for the purpose of protecting the reputations, rights and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the telephony, telegraphy, telecommunications, posts, wireless broadcasting, television, public exhibitions or public entertainment...”

It is inconceivable for a society to be democratic and free if it does not have a press that can act with absolute freedom, as long as the exercise of this freedom does not involve inciting hate or violence, or engaging in obscenity or



untruthfully damaging the reputation of others. The news media are the institutional underpinnings of the right of free speech and the right of the public to information, and without the media these rights would inevitably be limited.

As for its origin, freedom of expression and of the press must not be subject to the whim of authorities or the written law. If freedom of expression and of the press were to be established only in current laws, their content and protection would have a precarious basis. In noting the inalienable character of this right, the action of authorities that deny it or the existence of contradictory legislation amounts to violations of a superior juridical order – whether based on concepts in natural law, on international norms and principles enshrined in treaties or declarations or international law.

## **CONTRIBUTION TO PRINCIPLE TWO**

This principle recognizes the right to seek, disseminate and receive information of any kind; air views on any matter and disseminate any and all of them in any medium. The holders of this right are not only those who work as journalists, but everyone.

There can be no free press or free society if journalists in particular and citizens in general find themselves restricted in their seeking of timely and complete information, nor if those in government or the authorities surround their actions with secrecy or seek protection in laws that uphold secrecy as a means of preventing their actions being transparent.

The recognition of this right – to be informed and to form and express opinions – presupposes the recognition of the right to information that every member of society has. It is not the matter of a right of those who actively seek information, but also a right of those who hope to receive it through those divulging the information. There is no justification for imposing upon news media and journalists regulations on how they should do their work or news content.

Regulation of the press often has been used to restrict or deny these rights. Such restrictive regulation conspires against plurality and sows the seeds of totalitarianism at the same time that it strangles individual creativity that enables progress in civil liberties. Similarly, invoking the colour of law to justify restriction makes international denunciation and repudiation of dictatorships more difficult.

All these restrictions must be rejected as being an obstacle to the free dissemination of information and opinion.

### **CONTRIBUTION TO PRINCIPLE THREE**

Freedom of expression and of the press is taken to be, in this day and age, as the exercise of freedom of expression affecting the public and through any technical medium of social communication such as the graphics media, radio, cinema, television, telephone call-in shows, communication by satellite transmission, computer networks and all other technical means of communication. But no one is responsible for its performance except the press itself. To impose any kind of official demands for measuring what the press does is incompatible with freedom.

Even when the idea is implicit in “commitment to truth,” it is worth noting that in the same way a clear distinction is made between news items and advertisements, there should be a similar distinction made between news and the opinion of the person writing it.

For the press to effectively perform its functions, it needs to maintain the public trust, and this can only happen when its reports are factual, objective and fair to all concerned and when the pursuit of truth is its only agenda.

No news medium or journalist may be punished for publishing the truth; truth should be understood to be an ideal to be achieved, a goal to be pursued. The human condition also allows for a limited truth, which is not necessarily the truth of everyone else and in no way the sole and whole truth.

The free dissemination of this and other truths must be preserved, with all their peculiarities and limitations, and fundamentally the imposition of an official truth must never be accepted.

Truth emerges from the marketplace of ideas: even false ideas and information contribute to the search for truth.

In the exercise of freedom of the press, an abuse only exists if the information is disseminated with malice and full awareness of its falsehood.

#### **CONTRIBUTION TO PRINCIPLE FOUR**

Media self-regulation is about freedom. Free media are a pillar of a free and democratic society. Self-regulation is vital for media precisely because the media are regarded as a democracy watchdog. If an individual or an organization has the mission to protect other people's values and national achievements, this imposes great moral obligations. Those obligations should be subject to self-regulation, not imposed by any state, and not to any other kind of order or control, because no matter what political regime is in power, the world's laws are based on free will and the daily choices we make.

Self-regulation is also important for media as it has the power to generate change: of mentality, behaviour, policy, life. If the media want to be a driver of change, they should be responsible enough to change and develop constantly.

Self-regulation functions primarily for the protection of media from political censorship, economic dependence and devastating court cases. Others see media self-regulation as an educational tool for both journalists – since it imposes high professional standards – and the public – since it demands more vigilant media literacy. Self-regulation is also regarded as a tool for media accountability, which is so necessary and important if there is to be trust in the media. Media self-regulation is equally important in developing countries and in those with mature democracies, as achieving freedom and independence

is just as important as their preservation and protection in a socially responsible way.

Self-regulation protects the right of journalists to be independent and impartial, and to be judged for professional mistakes, not by those in power but by their colleagues. It aims at establishing minimum standards on accuracy, professional ethics, protection of privacy and other personal rights, preserving editorial freedom and freedom of speech, as well as a diversity of points of view and opinions.

Media self-regulation involves editors, media professionals, journalists and civil society as the main media consumers. Media consumers increasingly seek guarantees of the values and quality of media, and in this era of information overload, when we are flooded with news particularly via the Internet, credibility is challenged as never before. In an era when literally everyone can report the events they witness, the challenge to traditional media to prove their reliability becomes a life-or-death issue for them. Complaint mechanisms offer quality assurance and feedback. Often they are the fastest and most efficient way to obtain justice in the event of factual errors or violation of rights, in contrast with undertaking a long and devastating legal process. And here comes a very important task of media self-regulation – to make sure that those who report events quickly also report them correctly.

In Sierra Leone, the media regulator, the Independent Media Commission (IMC), has called on media institutions to practice self-regulation which is anchored on the Code of Ethics of SLAJ. Therefore, the journalist association must take steps to establish a credible disciplinary process to deal with violations of these principles.

## **CONTRIBUTION TO PRINCIPLE FIVE**

Every person has the right to receive information that will permit him to make judgments about public affairs affecting his welfare or that of the community. This unavoidably forces the authorities to permit free access to information in its possession generated within the public sector. This information ought to be

provided in a timely and fair manner, containing complete facts, including necessary supporting documentation, accurate data regarding its sources and any necessary explanations in order for the information being provided to be understood.

If the information is denied – or inadequately administered – it should be obtainable through the presentation of a petition, Habeas Data, writ of relief or another appropriate legal recourse. The government official responsible for withholding information should be punished. Journalists are in special need of this right.

This principle also includes guarantees for journalistic access to cover court trials and other legal proceedings, coverage that constitutes a guarantee of full and transparent administration of justice.

This principle, moreover, calls upon authorities not only to adopt the necessary measures, including legislative means, to ensure free access to public information, but moreover to make information available.

At present in Sierra Leone, there is a Right to Access Information Act, 2013. The Act provides for the disclosure of information held by public authorities or by persons providing services for them and to provide for other related matters. The Act, also in Section 2 (2), grants the right to access information held by or under the control of a private body “where that information is necessary for the enforcement or protection of any right.”

## **CONTRIBUTION TO PRINCIPLE SIX**

This principle is a call to public officials, especially judges, not to require journalists to reveal their information sources. This is an essential guarantee for the free practice of the journalistic profession because it allows the source to open himself to the journalist, confident that he will not be persecuted either by the subject of his information or by the justice system.

The Independent Media Commission Code of Practice of 2007 notes that: “Journalists have a moral obligation to protect confidential sources of information”.

Violation of this principle has a devastating effect on the flow of information because the fear of persecution will cause those providing information to be wary of doing so. Consequently, information sources will dry up and it will be difficult for journalists to get credible information.

### **CONTRIBUTION TO PRINCIPLE SEVEN**

Attacks on the practice of journalism and freedom of expression restrict the rights of all other citizens, for they limit the right to information of those citizens. They are thus open violations of human rights that, on occasion, manifest themselves in a gross and criminal manner and in subtle and deceitful ways.

The way in which those who take such actions repeatedly escape justice is one more assault to be added to the list of crimes against press freedom and news-gathering. The authorities cannot avoid their responsibility for this impunity. As a result:

- It is reaffirmed that governments have an obligation to guarantee and respect the practice of journalism and freedom of the press, to put an end to the assaults and in every case to encourage the relevant agencies to investigate and punish the guilty.
- Legal action must be taken promptly to punish the guilty swiftly and surely. The judiciary must act through the lower courts, excluding any participation of military or special tribunals that might end up protecting the criminals.
- The fight against impunity forces the national legislatures to stipulate that there shall be no statute of limitations for crimes against press freedom and news-gathering activities, and to be more cautious in considering granting amnesty or pardon to those crimes. Similarly, legislation must be geared towards establishing rules for a more effective legal process and the conviction of those who mastermind and execute these crimes.

- International financial and cooperation organizations must make a commitment in this fight against impunity, making it a condition that there be full respect for freedom of expression and effective investigation and punishment of those responsible for crimes against news-gathering activities.

The Human Rights Commission of Sierra Leone has been monitoring and reporting on human rights abuses and violations. The Commission should continue to highlight such limitations of press freedom in its reports submitted at local and international fora.

### **CONTRIBUTION TO PRINCIPLE EIGHT**

The actions that make up violations may have either a public or a private origin. Whatever their origin, however, the state has a responsibility for the actions it initiates or carries out, but also for not adopting the rules and regulations empowering it to prevent and punish violations of freedom of expression and of the press. The United States Supreme Court held that a prior restriction of that nature was “the essence of censorship.” According to the justices, the true essence of freedom of the press was the protection against prior restrictions, a philosophy that remains in effect currently. The power that a state has to halt publication – prevent facts from being disseminated or published – is of a highly repressive nature. That power can amount to prior censorship, or a court order not to disseminate or publish a report. Together with the orders that restrict the free movement of journalists and those that gag news sources, these direct restrictions make the existence of a free and active press impossible. Similarly, it is inadmissible for the private sector to exert pressure or prior censorship on the news media and influence their reporting or editorial opinions.

Prior censorship is the best known of the restrictions of free speech and press freedom. It supposes a control of information before it is disseminated and, consequently, the possibility of total or partial veto on the part of the censor. This has been used, and continues to being used, by totalitarian political

regimes. As a weapon of restriction of a fundamental right of man, it merits the repudiation anywhere it may appear and whatever the grounds used to justify it.

The express or hidden attacks, often unintentional, on free speech and press freedom may be committed not only by officials with executive functions, but also by legislators in their eagerness to regulate these rights, or by judges, with the aim of protecting other rights equally worthy of protection. And they might even come from persons or organizations that are connected with the state.

No limitation on the exercise of free speech and press freedom, on the grounds of defending democratic stability, can be allowed, as this stability is not endangered by those who denounce unlawful or immoral activity or incompetence but rather by the corruption, impunity or cover-up engaged in by those in positions of power.

Prior censorship and its subtle applications in the restriction of circulation of the media, arbitrary imposition of distorted reports, restrictions on advertising, creation of obstacles to the independent and unhindered flow of information and the free movement of journalists are all directly opposite to freedom of expression.

In Sierra Leone, there is an increasing tendency of the security sector to restrict access of journalists to information and degrade their ability to disseminate it through denying them opportunity to take pictures or record audio and video. In some cases, equipment have been destroyed and journalists arrested or assaulted.

The control of information on the part of the state may manifest itself in various ways, including sophisticated ones, such as the hiding of information and the control of the content of opinions or expressions citizens may utter. The hiding of information can be achieved by classifying the information as confidential or secret, giving censorship a certain air of legitimacy.

Control of the content of opinions can be made through control of correspondence, phone-tapping, placing hidden microphones and tape recorders, and other procedures utilized by government to prevent a citizen



from knowing he is being watched. These procedures not only interfere with freedom of expression, they also interfere with the exercise of other rights, such as the right to privacy.

Prior censorship can prevent journalists or news media from disseminating a report or opinion. Forced publication implies making journalists or news media publish a report or opinion with which they do not agree or they believe should not be published. It is perhaps even more serious to run something they do not believe in or is contrary to their views than to come out with a censored, blank space. The so-called rights of reply, response or rectification are clearly an arbitrary and obligatory form of publication. In free and democratic countries where there is competition and a plurality of media, no citizen remains defenceless over information that may be given about him. There will always be a news outlet that will be prepared – because of its own ethics, to gain credibility or for political or ideological reasons or even through friendship or acquaintance – to publish his version. And if the justice system works as it should in any democratic country, this will be the best recourse to check and punish any unlawful behaviour by the press, without restricting the rights and freedoms of journalists and the media to express themselves freely and unreservedly, make their own professional judgments, observe standards of ethics and even be protected, should the case arise in their right of ownership. Self-censorship, for which the media and journalists themselves share a responsibility, is another form of attacking free speech, press freedom and especially the people's right to be informed. It can be the product of violence, an arbitrary act, the lack of legal guarantees, all of which are common in authoritarian and totalitarian regimes. It is also something achieved through their violent actions against the media and journalists and those who murder journalists with impunity and assault the news media.

## **CONTRIBUTION TO PRINCIPLE NINE**

On the basis of this principle, the following definitions apply:

***Discrimination*** is any manner of making access to information difficult or denying such access, when it is the duty of the state and its agents to provide it;

***Favour*** is that which harms freedom of expression. It is the granting of any privilege to news media or journalists in order to stimulate praise, to create bias in reporting, express ideological commitment or other conduct which damages the reliability and credibility of information.

## **CONTRIBUTION TO PRINCIPLE TEN**

This principle responds to legal and administrative measures that at times are used by governments to favour or harm media or journalists. This directly or indirectly restricts the right to free speech and press freedom.

These actions take different forms, such as the application of discriminatory and abusive taxes and duties, placement of official advertising not based on the criteria of efficiency and fairness, lack of transparency in the award of radio and television frequencies, and the absence of controls to prevent the operation of illegal broadcast stations.

In short, the aim of this principle is to prevent authorities from acting arbitrarily in their relations with the media. The existence of trustworthy and independent legal systems and swift justice are a fundamental guarantee that any legislative or administrative action which assails free speech and press freedom will be corrected.

## **CONTRIBUTION TO PRINCIPLE ELEVEN**

Article 20 of the United Nations Universal Declaration of Human Rights of 1948 declares that: “No one may be compelled to belong to an association.” There is, therefore, a right of persons to associate or not – rather than an obligation.

The Constitution of Sierra Leone in Section 26 (1) provides that: “Except with his own consent, no person shall be hindered in the enjoyment of his freedom

of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade unions or other economic, social or professional associations, national or international, for the protection of his interests.”

The danger lies in the enemies of the freedom of the press, principally the governing class or the pressure groups, attempting to manipulate or intimidate the journalists by abusing the compulsory association requirement, that is, by establishing, suspending or doing away with it in order to favour or punish the journalists.

This principle provides the basis to one of the highest standards of jurisprudence and doctrinal trends of thought, as it establishes with unquestionable foundation the incompatibility of compulsory licensing or mandatory membership in associations or guilds with the right of each person to seek, receive, and impart information and ideas through any medium. This is accompanied by the right of society to receive information without obstacles. In the same manner, the right to freedom of association is a principle that ought to remain intact.

Academic efforts and the attainment of university degrees to improve the practice of journalism ought to be supported, insofar as these efforts do not impose restrictions on freedom of expression.

## **CONTRIBUTION TO PRINCIPLE TWELVE**

**“The root of criminal defamation law lies in Africa’s colonial history,”** (Nicol-Wilson et. al 2008). British laws criminalised libel for more than 700 years, dating back to 1275 where “extremely serious” libel and sedition were prosecuted in criminal court. From the colonial era to the present day, British Common Law generally applied to Sierra Leone. English law was first introduced in the colony by an Ordinance of May 29, 1862 and it provided that the laws and statutes in force in England in January 1862 should be applied to the colony.

The Criminal and Seditious Libel provisions in Part V of the Public Order Act of 1965 have been the most widely used laws against media practitioners in Sierra

Leone. The Sierra Leone Association of Journalists has consistently described the Criminal and Seditious Libel law as archaic, draconian and obnoxious. According to the Society for Democratic Initiatives (SDI), there are particularly problematic aspects of the criminal defamation regime:

*“The length of prison terms: at least with respect to expression on matters of public interest, the lack of a differentiated treatment of expression on matters of public interest including expression about political and other public figures which should be entitled to higher protection, the existence of a limited truth defence, subject to proof by the defendant that publication was ‘for the public benefit’ and placing the burden of proving truth and publication for the public benefit on the defendant, arguably is in violation of the principle of presumption of innocence.”*

SDI has also noted that the Public Order Act (POA) definition of Seditious Libel is similar to the traditional and antiquated understanding of the Seditious Libel in the British Common Law. The Seditious Libel, as defined by the POA, is almost universally considered superseded and incompatible with modern liberal democracy. It has either fallen into disuse or been expressly repealed in virtually all Commonwealth democracies. Indeed it is now considered to be part of a free media’s mission to expose government abuse and incompetence in ways that, by definition, are likely to create some degree of “disaffection” with elected and appointed officials.

A scientific study in the United Kingdom, based on research of the actual defamation cases brought to court, *‘Libel and the Media: The Chilling Effect,’* concluded that the defamation law in that country “significantly restricts what the public is able to read and hear.” Furthermore, it noted the “deeper, and subtler way in which libel inhibits media publication,” which functions in a “preventive manner: preventing the creation of certain material,” often referred to as the “chilling effect” (cited in Buckley et. al, 2008, p. 108).

The experience of the growing number of countries where defamation is exclusively a civil matter (i.e. countries that recently abolished criminal defamation laws - Bosnia-Herzegovina (2002), Central African Republic (2004), Georgia (2004), Ghana (2001), Sri Lanka (2002), Togo (2004) and Ukraine (2001) either by law or practice, demonstrates the adequacy of noncriminal sanctions in redressing harm to reputation (ibid, p. 111). The experience of these countries, which have not witnessed any increase in defamation cases or in the seriousness of defamation complaints, refutes the argument that criminal sanctions are necessary to punish statements (ibid, p. 112).

The three special international mandates for protecting freedom of expression--the UN Special Rapporteur, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression—called on states to repeal their defamation laws in their joint declarations of November 1999, November 2000 and December 2002.

The 2002 statement reads:

*“Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and repealed, where necessary, with appropriate civil defamation laws,”* (ibid, p.112).

The following is a universally acknowledged Good Practice Checklist:

- Public bodies—including all bodies that form part of the legislative, executive or judicial branches of government or that otherwise perform public functions--- should not be able to bring defamation actions.
- Defamation laws should not provide any special protection for public officials, whether through their rank or status.
- The overriding goal of providing a remedy for defamatory statements is to redress the harm done to the reputation of the plaintiff, not to punish those responsible for the dissemination of the statement.

- Remedies or sanctions for defamation should be proportionate to the harm done (ibid, p. 107).

Sierra Leone has Act No. 32 of 1961 which has as its short title 'Defamation Ordinance, 1961'. It is "an Ordinance to amend the law relating to Libel and Slander and other Malicious Falsehoods". It deals with the civil aspect of defamation. This should be used for cases of alleged defamation and amended if necessary to fit into modern times, taking into account the best practice principles.

It is necessary to clarify that press crimes do not exist as such, rather there are crimes committed through the press. The press is one of the means through which an illegal act exercising the right to expression can be committed; and the consequent liability should fall on the author of the expression and not on the journalist or communications outlet reporting it, when journalists or the media are republishing the information without making it their own.

Specially, the journalists or the communication medium bears no liability when:

- They limit themselves to republishing remarks by a third party without presenting the remarks as their own;
- The defamatory matter is not published as a statement of fact;
- The defamatory matter is not directed in particular at the alleged offended party; and
- Opinions are given about public officials, public figures or private individuals involved in matters of institutional or public interest.

Legal liability for the journalist or media for publishing defamatory matter is subject to the following proof by the plaintiff:

- The defamatory matter in the concrete case, which cannot be presumed;
- Actual damage suffered, which cannot be presumed;

- Malice of the journalist or communication outlet;
- The actual knowledge of the falsehood of the information if the plaintiff is accused of an illegal act;
- In a civil lawsuit, in regards to moral damages, the award shall not exceed reasonable bounds.

The plaintiff must clearly prove the following when the defamatory matter published refers to public officials, public figures or private individuals involved in matters of public interest:

- The defamatory matter in the concrete case, which cannot be presumed;
- Actual damages suffered, which cannot be presumed;
- The falsehood of the facts published and actual knowledge of its falsehood; and
- Direct malice by the journalist or communications outlet.

Whether the media outlet or the journalist was acting in the interest of the public must be considered in all cases.

These principles also apply to those countries whose legislations establish the right to rectification or reply as forced publication of information. But even in those cases, those rights should only be admitted when dealing with information published as statements of fact and not of opinion.

### **CONTRIBUTION TO PRINCIPLE THIRTEEN**

Sierra Leone got a public service broadcaster in 2010, over seventy years since radio broadcast started in the country. The Sierra Leone Broadcasting Service (SLBS) was transformed into the Sierra Leone Broadcasting Corporation (SLBC) in 2010 following the enactment of the SLBC Bill of 2009 which got the presidential assent in 2010. The SLBC Act, 2010 provides for the establishment of an independent and impartial public service broadcaster (Section 10, sub-section 2).

The empowering Act designates the SLBC as an independent Public Broadcaster, with an eight member Board of Trustees providing policy direction and overall guidance. The Management, headed by the Director General, is responsible for implementing policies, programmes and activities of the corporation, including the day-to-day operations, with all staff under his direct supervision, while also serving as Secretary to the Board of Trustees.

Currently, there are serious concerns about the operations of the SLBC, particularly in the area of the independence and accountability of the entity. The issues range from the composition and operation of the Board of Trustees; the appointment of management staff, programme production, participation in programming etc. The institution is currently seen as serving the interests of the government rather than that of the public.

This principle seeks to ensure that the public service broadcaster is truly independent and accountable to the people. This will include, among other things, an adherence to the principles of public service broadcasting, well defined management and administrative structures, an independent and impartial approach to news and other programmes, etc.



## **APPENDIX**

### **UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)**

#### **Article 19**

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.

### **EUROPEAN CONVENTION ON HUMAN RIGHTS (1950)**

#### **Article 10**

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

### **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)**

#### **Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all

kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a. For respect of the rights or reputations of others;
  - b. For the protection of national security or of public order or of public health or morals.

## **Article 20**

1. Any propaganda for war shall be prohibited by law
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

## **AMERICAN CONVENTION ON HUMAN RIGHTS (1969)**

### **Article 13: Freedom of Thought and Expression**

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure
  - a. Respect for the rights or reputations of others; or
  - b. The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over

newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding to provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offenses punishable by law.

#### **Article 14: Right of Reply**

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communication outlets, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honour and reputation, every publisher, and every newspaper, motion picture, radio, and Television Company, shall have a person responsible who is not protected by immunities or special privileges.

### **AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS (1986)**

#### **Article 9**

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.