



LIBYA: FREEDOM OF EXPRESSION IN LAW AND PRACTICE

BY THOMAS EBBS

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Thomas Ebbs is Director of Research with Lawyers for Justice in Libya.

INTRODUCTION

Libya's legal framework is, at present, inconsistent and at times contradictory. The legal framework contains many provisions that grant the Libyan State (the State) too much discretionary power to limit and criminalise expression that is considered legitimate under international law. As a result, there is an urgent need for the State to amend or repeal existing laws which restrict expression in a manner that is inconsistent with the 2011 Constitutional Declaration and Libya's international human rights obligations.

This chapter sets out the current legal framework governing freedom of expression in Libya, including restrictive pre-2011 laws that remain in force and in use, and examines freedom of expression in practice.

1.0 THE LEGAL FRAMEWORK

1.1 PRE 2011 - RESTRICTIVE LAWS STILL IN PLACE

THE LIBYAN PENAL CODE (1953)¹

The Libyan Penal Code criminalises various forms of expression in a manner which is largely inconsistent with Libya's international human rights obligations and the Constitutional Declaration. These include those which: insult public officials;² the Libyan nation³ or the Libyan flag;⁴ initiate a civil war in the country, fragment national unity or cause discord;⁵ aim to overthrow the political, social or economic system of the State;⁶ offend or attack religions;⁷ are indecent in nature;⁸ insult a person's honour;⁹ or, harm or prejudice the February 17 Revolution.¹⁰ While these limitations are provided by law, they fail to meet the thresholds of being sufficiently clear, necessary or in pursuit of a legitimate aim as required by international law.

The Libyan Penal Code also imposes severe penalties, including the death penalty.¹¹ Article 439 prescribes a minimum term of six months for "attacks against anyone's reputation by defamation." Article 203 imposes the death penalty for "aiming to initiate a civil war in the country, or fragmenting national unity, or seeking to cause discord." Article 207 also prescribes the death penalty for promoting "any views or principles" that aim to overthrow the political, social or economic order of the state. Article 291 renders blasphemy an offence, stating that anyone who publicly attacks the state's religion or blasphemes against God or his Prophet shall be punished by a penalty of detention for a period not exceeding one year, or a fine.

LAW 76 OF 1972¹²

The activities of media within Libya were previously governed by the Law 76 of 1972 (the Publications Act). The Publications Act restricted expression, allowing only lawful publications that were considered to be within "the framework of the principles, values and objectives of society".¹³ This allowed tight state control over media in Libya. The Publications Act was heavily criticised by the United Nations Human Rights Committee.¹⁴ Although Libya stated its intention to amend the Publications Act¹⁵ and superficially loosened some of its control over publication rights,¹⁶ the law remained largely unchanged.

1 The Libyan Penal Code (1953) consolidated with amendments (2014)

2 The Libyan Penal Code (1953), Article 178

3 The Libyan Penal Code (1953), Article 205

4 The Libyan Penal Code (1953), Article 245

5 The Libyan Penal Code (1953), Article 203

6 The Libyan Penal Code (1953), Article 207

7 The Libyan Penal Code (1953), Article 290 and 291

8 The Libyan Penal Code (1953), Article 421

9 The Libyan Penal Code (1953), Article 438

10 The Libyan Penal Code (1953), Article 195, amended by General National Congress Law 5 of 2014

11 The Libyan Penal Code (1953), Articles 203 and 207

12 Law No. 76 of 1972 on Publications ("the Publications Act")

13 The Publications Act, Article 1

14 For example, 15th Session Report of the Human Rights Committee (3 October 1995) A/50/40 Para 123-143, "the application of provisions of the Publications Act (1972) which are incompatible with article 19... should be immediately suspended and that steps should be taken for its revision"

15 Libya Country Report to the ICCPR (2007) CCPR/C/LBY/4, Para 23

16 Two private newspapers formed in Libya, however they remained closely affiliated with Saif al-Islam Gaddafi. Some foreign satellite television stations, such as al-Jazeera, were also allowed to be broadcast in Libya as part of the State's modernisation efforts

Independent media expanded rapidly after the 2011 uprising and the Publications Act's incompatibility with the Constitutional Declaration has led many, including the Libyan State,¹⁷ to declare the act as abrogated. However, media authorities have recently sought to issue orders and decrees, including the banning of publications, on the basis of the Publications Act.¹⁸ Although the application of the Act in these cases is likely to be unlawful, the consequences for free expression are no less real and dangerous.

LAW 20 OF 1991

"The Promotion of Freedom Act" was ostensibly enacted to provide a domestic interpretation of Libya's civil and political human rights obligations under international law. In Article 8, it codifies the right of Libyan citizens to express opinions and ideas with people's congresses and through the media.¹⁹ As such, it is a limited recognition of a right to expression, empowering a particular class of individuals (citizens) within a limited number spaces (people's congresses/media). This limited conception conflicts with the character of freedom of expression, which is defined as an inalienable entitlement of all humans to impart and receive information of all kinds, regardless of frontier or form.

The act sets out ambiguous limitations on the Libyan State's guarantees of free expression. For example, it states that expression "detracting from the people's authority"²⁰ is not protected. As a result, many types of expression that are vital for human dignity and good governance, such as joining political parties, being critical of government activities, or engaging in peaceful protest, are not protected under the Promotion of Freedom Act.

The Promotion of Freedom Act also expressly prohibits specific forms of expression, including secretly advocating ideas and attempting to impose thoughts through enticement, force, intimidation or fraud.²¹ The prohibition of secretly advocating ideas does not seem to follow a legitimate aim, as required by Libya's international obligations, and seems to conflict with the protections of sanctity and secrecy of correspondence offered by the Constitutional Declaration. Limiting expression that seeks to use enticement, force, intimidation or fraud may be more consistent with meeting the required pursuit of a legitimate aim, as outlined in international law. However, the wording of the Promotion of Freedom Act fails to be consistent with the International Covenant on Civil and Political Rights (ICCPR), as it does not provide sufficient legal detail or consider the necessity of stipulated sanctions.

1.2 POST 2011 - REPETITION OF THE PAST

THE 2011 CONSTITUTIONAL DECLARATION

The Constitutional Declaration states that expression will be guaranteed in accordance with the law.²² It does not, however, explicitly state the need for restrictions to expression to pursue a legitimate aim or necessity as required by international law. Article 14 of the Constitutional Declaration offers protection for various freedoms, including

17 Libya Universal Periodic Review Country Report to United Nations Human Rights Council (2015) A/HRC/WG.6/22/LBY/1 Para 82

18 Mat Nashed "Libya's Banned Book", Libya Chronicles (8 September 2017) - <https://magazine.zenith.me/en/culture/young-writers-speak-their-libya> (last accessed 28 September 2017)

19 The Promotion of Freedom Act, Article 8 states: "Every citizen has the right to express and publicly proclaim his opinions and ideas to the people's congresses and the information media of the Jamahiriya. No citizen shall be answerable for his exercise of this right unless he exploits it with a view to detracting from the people's authority or for personal ends. It is prohibited to advocate ideas or opinions clandestinely or to attempt to disseminate or impose them on others through enticement, force, intimidation or fraud."

20 The Promotion of Freedom Act (1991), Article 8

21 The Promotion of Freedom Act (1991), Article 8

22 The Constitutional Declaration (2011) Article 14 makes reference to the right being guaranteed "in accordance with the law" which may be interpreted to allow the State to use law to restrict to freedom of expression rights without reference to legitimate aims or necessity

“Freedom of opinion for individuals and groups, freedom of scientific research, freedom of communication, liberty of the press, printing, publication and mass media...”²³ The Constitutional Declaration does guarantee other rights which may, on occasion, need to be balanced with the right to freedom of expression. These include the right of citizens to a private life;²⁴ to secrecy of correspondence;²⁵ and to intellectual property.²⁶

DECREE 15 OF 2012

The decree placed a blanket ban on media discussion of religious opinions (fatwas) issued by the national council of Islamic Jurisprudence (Dar Al-Iftaa). The decree remains untested in relation to its compliance with the Constitutional Declaration and has largely been ignored by media organisations. There remains a danger that it will be used in the future to suppress legitimate debate.

RESOLUTION 13 OF 2012

The resolution abolished the Higher Media Council, established in 2012, and ultimately considered to lack independence and to have failed to protect media diversity. A Ministry of Media was established in its place. The GNC was mandated to oversee it via the creation of specialised committees, but these failed to materialise in any meaningful way. Instead, the GNC continued to play a direct role in media regulation.²⁷

LAW 3 OF 2014²⁸

“The Law on Combatting Terrorism” criminalises “terrorist acts” which include expression that “disrupts public order or endangers peace of the society”.²⁹ The law also criminalises the “disclosure of information directly or indirectly for the benefit of terrorist organisation or people that have ties to terrorist organisations”.³⁰ The law also makes it illegal to engage in advertising, promoting or misinforming anyone on committed terrorist acts, in a manner which is publicly accessible.

The overly broad definition of terrorist acts leads to concern that the law could be used illegitimately to restrict freedom of expression, including participation in peaceful protests.³¹ In addition, the disproportionate punishments, including life imprisonment for some acts, may breach international requirements for necessity.

The law may, as a result, fail to adhere to the standard required by the Constitutional Declaration and Libya’s international human rights obligations. In addition, the legitimacy of the House of Representatives, while internationally recognised, remains the subject of contentious debate.³² Consequently, many would consider the Law on Combatting Terrorism to be void and unenforceable.

LAW 5 OF 2014

23 The Constitutional Declaration (2011), Article 14

24 The Constitutional Declaration (2011), Article 12

25 The Constitutional Declaration (2011), Article 13

26 The Constitutional Declaration (2011), Article 8

27 Notably, it passed GNC Decree 5 of 2014

28 “Law on Combatting Terrorism” Law 3 of 2014

29 Law on Combatting Terrorism (2014) Article 2

30 Law on Combatting Terrorism (2014) Article 11

31 “Libya: Amend Counterterrorism Law” Human Rights Watch (13 May 2015). <https://www.hrw.org/news/2015/05/13/libya-amend-counterterrorism-law> (last accessed 28 September 2017)

32 The Libyan Supreme Court issued a ruling on 6 November 2014, which may be interpreted to have invalidated the elections that resulted in the appointment of the House of Representatives.

GNC Decree 5 of 2014 “Concerning the Cessation and Ban on the Broadcasting of Certain Satellite Channels”

Law 5 of 2014 amended the Penal Code to criminalise “any action, which may harm or prejudice the February 17 Revolution, as well as insulting remarks publically directed at the executive, judiciary, or the legislature of any of their members, or insulting the nation’s flag”.

DECREE 5 OF 2014³³

The decree sought to ban television and radio stations if they broadcast viewpoints that were considered “hostile to the February 17 Revolution and whose purpose is the destabilisation of the country or the creation of divisions amongst Libyans”.³⁴

1.3 THE 2017 CONSTITUTIONAL DRAFT

The most recently proposed Constitutional draft (the Draft),³⁵ issued by several members of the Constitutional Consolidation Committee,³⁶ may indicate the future treatment of freedom of expression within Libya’s legal framework.

The Draft offers safeguards for freedom of expression and freedom of publication, noting that the state shall take “necessary measures” to protect private life and prohibit incitement to hatred, violence, and racism based on ethnicity, colour, language, gender, birth, political opinion, disability, origin, geographic affiliation, or any other reason whatsoever.³⁷ It also prohibits a form of hate speech known as *takfir*³⁸ (declaring someone to be an unbeliever or apostate). The Draft also attempts to offer protection for the right to information, stating that “the State shall develop the necessary measures for transparency and shall ensure the freedom of receiving, sending, exchanging, and examining information from multiple sources”.³⁹

Whilst these are progressive steps and would likely strengthen the protection of freedom of expression, they still fall short of international legal standards. The Draft’s provisions neither specify that the State’s measures restricting the right to freedom of expression must be provided for in law, nor list the exhaustive legitimate aims provided in international law, instead providing specific examples of prohibited expression.

The Draft’s provisions which guarantee the freedom and independence of the press and media⁴⁰ are not consistent with international minimum standards. They potentially limit this right to citizens, rather than anyone within Libya’s territory and jurisdiction. In addition, the Draft allows for judicial authorities to ban and revoke an individual’s access to the right, without reference to the requirements of international law for necessity of the restriction or pursuit of a legitimate aim.

The Draft establishes the need for a law, to be passed by the Libyan government, which regulates “the Higher Council for Media and Press”. The Draft stipulates that this law must adhere to the constitution’s other provisions,

33 GNC Decree 5 of 2014 “Concerning the Cessation and Ban on the Broadcasting of Certain Satellite Channels”

34 There are unverified reports that this Decree has been the subject of legal challenge and deemed as unconstitutional by a judicial decision. An addendum to this report will follow if verified.

35 “Proposal of a Consolidated Draft Constitution” (6 April 2017), Constitutional Consolidation Committee, Beida

36 For more information on the issues facing this please see “Constitutional Drafting Assembly to vote on dangerous constitutional draft without public consultation”, Lawyers for Justice in Libya, 6 May 2017: <http://www.libyanjustice.org/news/news/post/276-constitutional-drafting-assembly-to-vote-on-dangerous-constitutional-draft-without-public-consultation>

37 Proposal of a Consolidated Draft Constitution (2017), Article 38

38 Proposal of a Consolidated Draft Constitution (2017), Article 38

39 Proposal of a Consolidated Draft Constitution (2017), Article 47

40 Proposal of a Consolidated Draft Constitution (2017), Article 39

but that the law will be free to determine the compositions, competences, and work systems of the Higher Council for Media and Press.⁴¹

1.4 INTERNATIONAL AND REGIONAL TREATIES

The right to freedom of expression is guaranteed by a number of international and regional human rights treaties. The strongest protections that apply to Libya are included in the International Covenant on Civil and Political Rights (ICCPR)⁴² and the African Charter on Human and People's Rights (ACHPR), ratified by Libya in 1976 and 1986 respectively.⁴³

⁴¹ Proposal of a Consolidated Draft Constitution (2017), Article 164

⁴² The International Covenant on Civil and Political Rights (ICCPR) (1966) Article 19 states: "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." The ICCPR also places an obligation on Libya to "respect and ensure all individuals within its territory and subject to its jurisdiction" to legislate where necessary to give effect to the rights recognised in the ICCPR; and to ensure individuals who have experienced a right violation have effective remedy.

⁴³ The African Charter on Human and People's Rights (1981) Article 9 states: "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." The African Commission on Human and Peoples' Rights held, in Communication 102/93 against Nigeria (1998) that authorities should not enact provisions which limit the exercise of the freedom guaranteed under Article 9 of the African Charter in a manner that breaches constitutional provisions or undermines the fundamental rights guaranteed by other international human rights documents, such as the ICCPR

2.0 FREEDOM OF EXPRESSION IN PRACTICE - POLITICAL AND JUDICIAL ACTIVITY

2.1 JUDICIAL INTERPRETATION

The Libyan legal system makes international treaties that are ratified by the State and published in the Official Gazette directly binding and enforceable by the domestic judiciary. Any interested party may invoke their rights and petition the judiciary to implement the provisions of such international treaties and conventions.⁴⁴ However, due to the current incapacity of the Libyan judiciary, the ability of individuals to secure accountability for violations of freedom of expression is principally limited to the complaints mechanisms established by human rights treaties.

However, the Libyan Supreme Court has ruled that some laws which restrict expression are unconstitutional. In June 2012, the Libyan Supreme Court ruled that Law 37 of 2012, which sought to criminalise and provide prison sentences for acts which “harm the state” such as “the glorification of the dictator, his regime, his ideas or his sons” as well as publishing any news, propaganda or rumours which “harm the 17 February revolution”, was unconstitutional.⁴⁵ In doing so, the Libyan Supreme Court demonstrates that providing for a restrictive measure in law is, in itself, insufficient to constitute a constitutionally compliant restriction. The Libyan Supreme Court referenced the need for laws that criminalise expression to be clearly defined to avoid additional acts, not intended by lawmakers, from being criminalised. This is consistent with the requirement of the ICCPR for laws to meet reasonable standards of clarity and precision.⁴⁶

Beyond the need for greater clarity and specificity in criminal laws, it remains unclear whether other laws that restrict expression are consistent with the Constitutional Declaration. The Libyan State’s communications at the international level suggest that some laws have been immediately abrogated due to lack of compliance with the Constitutional Declaration.⁴⁷ One possible inference is that the Constitutional Declaration may only allow restrictions that adhere to Libya’s international human rights obligations.

2.2 RESTRICTIVE ENVIRONMENT

Libya was ranked 163 of 180 countries in the 2017 World Press Freedom Index published by Reporters Without Borders.⁴⁸ The restrictive legal framework allows the State to bring about prosecutions under the illegitimate provisions outlined in section 1. During the General National Congress elections in 2012, Ali Tekbali and Fathi Sagar were detained for their alleged use of illegal posters during their campaign for the Libyan National Party. The prosecution claimed that a character in the poster depicted the Prophet Muhammad in a satirical fashion. They were charged with several offences, including those detailed in Articles 203, 207 and 291 of the Libyan Penal Code and, as a result, punishable by death. The defendants were acquitted in March 2014. In addition to the disproportionate offences put to them, the length of their detention marks a significant and unacceptable delay, in breach also of their right to due process. In addition, as a result of the attempted prosecutions, the headquarters of the Libyan National Party were shut down by order of the general prosecutor, hindering the party’s capacity to continue its election campaign.

⁴⁴ Libya Country Report to the United Nations Human Rights Committee - (2007) CCPR/C/102/Add.1 Para 31

⁴⁵ Constitutional Challenge 59/5, the Libyan Supreme Court

⁴⁶ ICCPR (1966), Article 19 (3)

⁴⁷ Libya Universal Periodic Review Country Report to United Nations Human Rights Council (2015) A/HRC/WG.6/22/LBY/1, Para 82

⁴⁸ <https://rsf.org/en/libya>

Another example is that of the case of Amara Al-Khitabi, editor of the newspaper Al-Umma. Al-Khitabi was arrested in November 2012 for the publication of a list of 87 judges and prosecutors suspected of corruption and charged with “insulting of constitutional or popular authorities”, which carries a 15-year prison sentence under Article 195 of the Penal Code. He was later sentenced to five years in prison and fined.

In August 2017, a group of 27 young Libyan writers of a book entitled Sun on Closed Windows were subjected to threats, including death threats, persecution and intimidation, following accusations that Sun on Closed Windows contains language “contrary to public morals”. The Head of the General Authority for Printing and Publications under the General Authority of Culture of the GNA, Al Mabruk Alghali Al Mabruk, released a statement condemning the content of the book as “dangerous for public morality and threatening to the integrity of Islam.” The GNA referred to the Publications Act in banning the book and ordered the confiscation of all copies, claiming they had been smuggled into Libya illegally. The use of the Publications Act is particularly worrying due to its obvious incompatibility with the Constitutional Declaration, and the Libyan State’s previous declaration that the law had been abrogated.⁴⁹

Alongside the legal disruptions to their work, the hostile environment places freedom of expression stakeholders at serious risk. They are frequently subject to harassment, threats and attacks, often carried out by non-state actors in retaliation for criticism of their actions. Key freedom of expression stakeholders, including journalists, activists and lawyers, have been targeted, including Muftah Abuzied, Nasib Karnafah, Adbulsalam Al-Mesmar, Salwa Bugaighis and Tawfik Bensaud, all of whom were killed in retaliation for their work. The State has failed to protect civilian targets from these attacks and to bring their perpetrators to justice. It has, in fact, supported the existence of these groups by enabling their impunity and providing some with financial support or outsourcing public functions to them. Earlier this year, two radio stations in the East were arbitrarily and suddenly shut down by a security force and militia respectively.⁵⁰ Meanwhile, Annabaa television channel in the West was subject to an arson attack by an armed group which later published a list of the television channel’s employees.⁵¹

The legal, political and security environment has led to increasing self-censorship and polarisation of the media. There has been an escalation of hate speech and incitement of violence, which has destroyed plurality, fuelling division within Libyan society through misinformation and even encouraging attacks and assassinations of individuals.

2.3 CURRENT REGULATION OF THE MEDIA

Currently, the Ministry of Media⁵² (MoM) holds the mandate for media governance under the Government of National Accord (GNA). In 2016, the MoM published several communications relating to media conduct via its Facebook page. These communications have called on all media outlets to provide the MoM with their permissions, licenses, sources of funding and relevant audits⁵³ and to register with the MoM.⁵⁴ The MoM has issued public communications ordering individual agencies to comply with these orders, making reference to the

⁴⁹ Libya Universal Periodic Review Country Report to United Nations Human Rights Council (2015) A/HRC/WG.6/22/LBY/1 Para 82

⁵⁰ <https://rsf.org/en/news/rsf-decries-closure-two-radio-stations-libya>

⁵¹ <https://rsf.org/en/news/rsf-and-lcfp-create-joint-crisis-unit-annabaa-tv-journalists>

⁵² The MoM refers to itself as the Ministry for Information in English, but should not be confused with the other Ministry of Information which is concerned with providing data and statistics for public use.

⁵³ Ministry of Media Communication 29/2016 - Referencing President of Council of Ministers Decision No 239 of 14 Jan 2016 (26 Jan 2016)

⁵⁴ Ministry of Media Communication 11/156 2016 (28 July 2016)

Publications Act.⁵⁵ The MoM has also issued communications forbidding the broadcast of materials that depict the prophet Mohammed and his companions, apparently in compliance with *fatwas* issued by Dar Al-Ifta.⁵⁶

The legitimacy of the MoM's communications is a contentious topic, not least due to the current political and legal fragmentation of the Libyan State.⁵⁷ In addition, the communications issued by the MoM may have exceeded its legal mandate and violated supreme law (including the Constitutional Declaration). These have not yet been subject to judicial review.

2.4 REGULATION OF ONLINE CONTENT

Prior to the 2011 Uprising, the General Postal and Telecommunications Company (GPTC), was the sole authority for domain name registration and issued "the Terms of Service" governing the use of the Libyan ".ly" registry.

Transitional governments subsequently removed the GPTC and established the Libyan Post Telecommunications and Information Technology Company (LPTIC) and the General Authority of Telecommunications and Informatics (GATI).⁵⁸ LPTIC is a holding company for all telecommunications service providers in the country, while GATI is responsible for policymaking and regulations. Responsibility for Libya's top level domain ".ly" is currently that of Libya Telecom and Technology (LTT),⁵⁹ with Libyan Spider handling registration requests.⁶⁰

LTT has continued to recognise the Terms of Service issued by the GPTC. The Terms of Service prohibit domain names that are "obscene, scandalous, indecent, or contrary to Libyan law or Islamic morality words, phrases or abbreviations". The Terms of Service also do not permit the use of Libyan domains by sites which are "for any activities/purpose" not permitted under Libyan law. LTT may delete registered domains if they consider registrants to be in violation of any of the Terms of Service, or if LTT receives an order from a Libyan court.

In February 2015, LTT blocked access to the news site, Alwasat, which published views critical of the GNC and affiliated militias, apparently in response to a court order.⁶¹ The LPTIC subsequently published a statement saying that the website blocking was unintended, and had been the result of LTT facilities being taken over by "outlawed groups" acting illegitimately and issuing false statements.⁶² The block on Alwasat has since been lifted.⁶³

⁵⁵ Ministry of Media Communication 136/2016 (5 May 2016)

⁵⁶ Ministry of Media Communication Communication 1708 (13 October 2015)

⁵⁷ The Beida Based Government has established competing media regulatory bodies, currently represented by the Information and Culture Authority and The General Authority for Media, Culture and Civil Society. At present no full record is available of relevant regulations passed by these bodies, but an addendum will follow once the information has become available. They have, however, issued public comments, such as supporting the use of the Publications Act (1972) to ban "obscene" publications. See statement of 6 September 2016 by The General Authority for Media, Culture and Civil Society.

⁵⁸ "Freedom on the Net 2016", Freedom House (2016), page 7 - <https://www.justice.gov/eoir/page/file/916901/download> (last accessed 28 September 2017)

⁵⁹ "Freedom on the Net 2016", Freedom House (2016), page 7 - <https://www.justice.gov/eoir/page/file/916901/download> (last accessed 28 September 2017)

⁶⁰ Accessed through <http://register.ly/> (last accessed 28 September 2017)

⁶¹ "Organizations and media figures and human rights condemns blocking" [in Arabic] Alwasat News, April 8, 2015

⁶² "Alwasat News" on LPTIC, Facebook Post, February 25, 2015, <http://on.fb.me/1GdNeGm>; (last accessed 28 September 2017)

⁶³ "Freedom on the Net 2016", Freedom House (2016), page 7 - <https://www.justice.gov/eoir/page/file/916901/download> (last accessed 28 September 2017)

3.0 CONCLUSIONS AND RECOMMENDATIONS

Despite the initial hopes following the 2011 uprising, freedom of expression remains in a precarious position in Libya. Accessing legal protections, such as human rights, remains nearly impossible for individuals.

While the Constitutional Declaration offers theoretical protection, its provisions and its intentions have increasingly been disregarded; draconian laws such as the Publications Act, once believed to have been repealed, are being used once again to ban the sale of books. In addition to the use of pre-2011 laws, transitional governments have repeatedly attempted to introduce new measures that limit and criminalise expression, especially that which is critical of their authority. Further, despite repeated calls from Libya's nascent media sector, current drafts of the future constitution continue to enable the regulation of the media by central government.

RECOMMENDATIONS

- Any legal limitation to the activities of media practitioners must be specific in scope, address a legitimate aim and be considered necessary for the respect of the rights or reputations or others, or for the protection of national security, public order, public health or morals. Accordingly, existing limitations - such as those found in Law 76 of 1972, Decree 5 of 2014, or Law 5 of 2014 which arbitrarily allow the state to restrict media activities on grounds that they are not "within the principles of the revolution", are "hostile to the February 17 Revolution", or may "harm or prejudice the February 17 Revolution" - must be abolished. Further, limitations violating the international legal principles of legitimate purpose and necessity, such as Law 15 of 2012 which prohibits discussion of fatwas issued by Dar Al-Iftaa, must also be abolished.
- The state must ensure a diverse and pluralistic media by establishing an independent, self-regulatory media body free from political, economic or other undue influence. This body must work to end hate speech and media polarisation by promoting an informed and representative debate in order for the media to fulfil its role of ensuring accountability and transparency. Further, there should be no licensing or registration system for the media, and there should be no licensing of individual journalists or entry requirements for practicing the profession.
- The state must take active steps to safeguard the right of journalists, activists and media entities to carry out their work and to end the resulting self-censorship and loss of plurality caused by the hostile environment. In particular, the state must work to end the impunity with which attacks against media practitioners are carried out, by investigating, pursuing accountability, and ensuring that remedies are available to the victims and their families for such crimes.
- The future constitution must provide a framework for freedoms of expression, information, association and assembly, and media which safeguards and encourages a pluralistic media. It must prohibit prior censorship and ensure that any legal limitations to these rights and to the activities of media practitioners conform to the exhaustive legitimate aims established by Libya's international legal obligations. The new constitution must also lay the foundations for independent media self-regulation.