



Stakeholder Report to the United Nations Human Rights Council Universal Periodic Review- Libya

Freedom of Expression

Submitted by the Libyan Center For Freedom Of Press

October 2014

Keys Concerns

- Libya's domestic laws fail to safeguard or guarantee freedom of press in compliance with international human rights standards.
- The Libyan state has adopted new laws and regulations that undermine freedom of press and democratic accountability by unjustifiably restricting and criminalising forms of legitimate expression.
- State regulation of the press is currently not transparent and lacks any mechanism to ensure its independence or accountability.
- Media professionals are actively targeted by armed non-state actors for the nature of their work. The Libyan state has not taken sufficient steps to investigate or prosecute the perpetrators of such offences or better protect the fundamental human rights of media professionals.

Introduction

1. The Libyan Center For Freedom Of Press (**LCFP**) is a Libyan independent organisation established by a group of journalists dedicated to the protection of the freedom of the press and media, the promotion of a free press and the development and capacity building of new young journalists.
2. Following the last Universal Periodic Review (**UPR**) on Libya in 2010, the state has failed to implement the recommendations directly concerning freedom of expression, including in relation to the freedom of the press.
3. Whilst hundreds of new media outlets were established following the 2011 uprising, as instability on the ground has increased, Libya has failed to safeguard or ensure effectively the human rights of journalists and broadcasters. Media practitioners have been actively targeted by armed groups because of their work and as a result, they have been subjected to intimidation, kidnapping, and assassinations, as well as attacks on their workplace.

4. The state has failed to investigate or prosecute those responsible for these crimes, and continues to rely on armed non-state actors to carry out state functions. In addition, despite initial assurances of the right to freedom of expression under Article 14 of the Libyan Constitutional Declaration of 2011, the Libyan state has adopted repressive laws that restrict freedom of press and criminalise legitimate expression.

Developments in Domestic Law

5. The Libyan state supported three recommendations detailed in its previous UPR, which concern freedom of expression, with one recommendation expressly dealing with freedom of the press. These were to “comply with international obligations, and ensure full and unhampered enjoyment of freedom of expression” (93.41), to “abrogate all provisions criminalizing freedom of expression” (93.42) and to “provide free, independent media in accordance with the Libyan Arab Jamahiriya’s international obligations” (93.43). Libya has failed to amend its domestic law to adhere to any of these recommendations and has, in fact, adopted new measures which further undermine them.
6. Libya’s first interim transitional government, the National Transitional Council (NTC), adopted Law 37 of 2012 on the criminalisation of the glorification of the dictator, which represented a serious breach of freedom of expression. The law carries a prison sentence for those who spread news, propaganda or rumours, including “praising or glorifying Gaddafi, his regime, his ideas or his sons”, with the aim of “terrorising people” or “weakening public morale” during times of war. The law also provides for a life sentence where such acts “harm the state.” It also criminalises and provides a prison sentence for those who publish any news, propaganda or rumours which “harm the 17 February revolution.” The broad scope of Law 37, in addition to the heavy penalties it imposes, provides undue restrictions on freedom of expression, particularly freedom of press. Although, upon judicial review, Libya’s Supreme Court found this law to be unconstitutional, it set the tone for Libya’s legislature which has continued to repress freedom of press through other legislation.
7. Law 15 of 2012 restricts freedom of the press by prohibiting media discussion of religious opinions (*fatwas*) issued by the National Council of Islamic Jurisprudence (*Dar Al-Ifta*). It is in the public’s interest to allow free discussion of such statements for a democratic society to flourish. Restriction of such expression is inconsistent with Libya’s international obligations under the International Covenant on Civil and Political Rights (ICCPR).
8. Law 5 of 2014 amended Article 195 of the Penal Code to include “the criminalisation of any action, which may harm or prejudice the February 17 Revolution, as well as insulting remarks publicly directed at the executive, judiciary, and the legislator or any of their members, or insulting the Nation’s flag”. This law, together with Law 15 mentioned in paragraph 7 above, impose arbitrary restrictions to freedom of expression including freedom of the press and are in direct breach of Libya’s international obligations under Article 19 of the ICCPR. Such laws encourage

ensorship, which has a detrimental effect on state accountability, if public officials cannot be criticised openly in public, providing that such criticism is not harmful. The establishment of criminal offences for defamation contravenes recommendation 93.42 to “abrogate all provisions criminalizing freedom of expression,” which enjoyed Libya’s support in its last UPR.

9. Journalists have been targeted by the state. For example, Amara Al-Khitabi, editor of the newspaper Al-Umma, was arrested in November 2012 for the publication of a list of 87 judges and prosecutors suspected of corruption. He has been charged with “insulting of constitutional or popular authorities” and could face a 15-year prison sentence under Article 195 of the Penal Code. The ambiguous language of the law used under which Khitabi was sentenced allows for its arbitrary application. This is especially concerning given the severe custodial sentences related to this offence. Such laws endanger free discussion of politics, encourage self-censorship, and severely threaten the ability of citizens or civil society to hold state actors accountable.
10. The Libyan state failed to abolish laws which restrict media publication. Law 76 of 1972 on publications, modified by Law 120 of 1972, and Law 75 of 1973, governs the press and restricts publishing rights to two public entities, Al Dar al-Jamahiriya and the General Corporation of Press, Professional Unions, and Syndicates.. Although these laws are not actively enforced, there is still a danger that these laws could be used to restrict arbitrarily publications produced through other publishing entities.
11. Law 38 of 2012 provides a blanket amnesty for any “acts made necessary by the 17 February revolution” for its “success or protection”, whether such acts are of a military, security or civil nature. This law represents a serious impediment to the establishment of the rule of law and the protection of media professionals’ rights in Libya as it allows perpetrators to continue committing human rights violations in the name of the revolution.

Institutional Regulation

12. The Libyan state supported recommendation 93.43 to “provide free, independent media in accordance with the Libyan Arab Jamahiriya’s international obligations” in its previous UPR.
13. As independent media has rapidly grown since the 2011 uprising, the state has sought to reform media regulation. As a result, Decree number 44 of 2012 issued by the NTC relocated the state’s media regulation from the Ministry of Culture and Civil Society to a High Media Council (**the Council**). The Council was mandated with drafting “regulations and laws regulating media operations,” issuing “a code of media ethics,” granting “necessary licenses to media institutions of all types,” preparing “a concept of how to elect a president and members of the High Media Council,” and “considering individuals’ complaints against media institutions.”

14. Libyan journalists were not consulted when the Council was established. This was concerning as the Council could have re-established state control over their work, in breach of Libya's international obligations.
15. In February 2013, the GNC replaced the Council with the Ministry of Media. The role of the Ministry, its capacity, and makeup remain vague. As a result, no measures appear to have been adopted to ensure independence of this Ministry, which is vital to ensure that press freedom is not arbitrarily restricted in the future.
16. Decree 5 of 2014 called for the cessation and ban of broadcasting several satellite channels in Libya, which are "hostile to the February 17 revolution and whose purpose is the destabilisation of the country or the creation of divisions among Libyans." It instructed the state to take "all measures" against countries or businesses in territories from where the channels are broadcast if they do not block the transmission of these stations. Such restrictions to freedom of press are not consistent with Libya's obligations under the ICCPR. Such a provision limits the ability to foster an environment of media pluralism and public access to a diverse range of information and opinion.

Attacks on Media Professionals

17. Libya's previous UPR report did not have any recommendations concerning the need to ensure the safety of journalists and media practitioners. In the last year, LCFP has documented 10 cases of deaths, including the death of Barniq's newspaper editor-in-chief, Muftah Abuzied, in May 2014, by gunfire. 65 cases were documented of failed assassination attempts, kidnappings and cases of torture. In March 2014, journalist Esam Aloul, editor-in-chief of Alwatan newspaper was kidnapped. He was tortured during detainment and was then released. Women were also targeted. In May 2014, journalist Nasib Karnafah was killed in Sebha, in southern Libya, and her body was found with torture marks. The organisation has also documented 20 cases of detainment; and 90 cases of harassment, all directed at media practitioners. In addition, 27 cases of looting of television and radio stations have been documented by LCFP in this same period. Many of the reported incidents appear to be politically and ideologically motivated, based on the owner's or his or her organisation's coverage of events that are critical of, or undermine, the interests of armed non-state actors. As a result, media practitioners face significant new threats to their fundamental human rights, which have in turn resulted in an environment of fear and self-censorship.
18. The Libyan state has failed to take measures to ensure the safety of media professionals or to bring about prosecutions against those responsible for these abductions and attacks. The state's inaction is in breach of Libya's international obligations under Article 17(2) of the ICCPR which guarantees "everyone has the right to the protection of the law against such interference or attacks" or to promote Article 19 to ensure "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.”