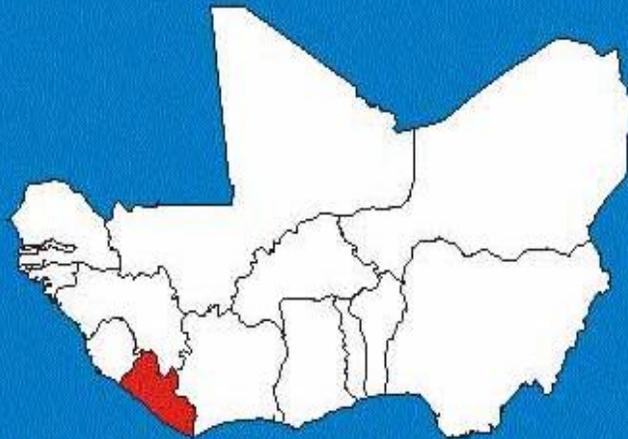


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- Liberia

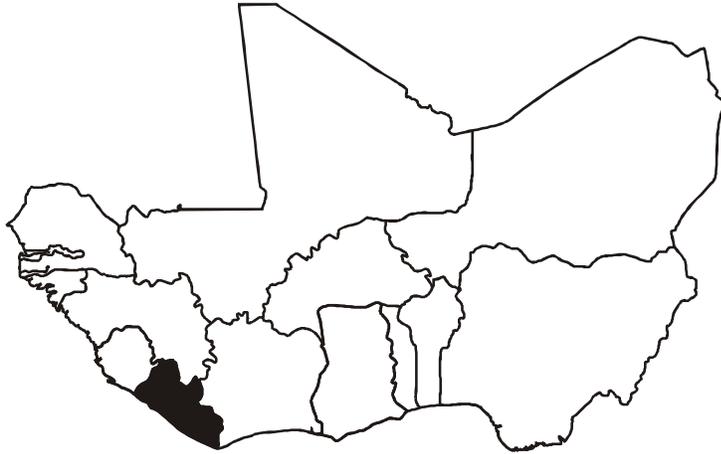


Report of Research into Laws of Liberia with
Access to Information Provisions



WINDOWS FOR TRANSPARENCY

- Liberia



**Report of Research into Laws of Liberia with
Access to Information Provisions**

A publication of



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Preface

This report is based on a legal research conducted by Media Rights Agenda (MRA) in collaboration with the Center for Media Studies and Peace-building (CEMESP) in Monrovia, Liberia, to establish the scope of access to public information granted citizens and other members of the public under Liberian Law.

The research was motivated by the need to explore possibilities for citizens and other members of the public in Liberia to exercise their rights of access to information under the Law even in the absence of a comprehensive Freedom of Information Law as part of a wider project in selected countries in West Africa.

Media Rights Agenda began working on access to information issues in 1993. In 1994, it partnered with the Civil Liberties Organization (CLO) and the Nigeria Union of Journalists (NUJ) to launch a campaign for the adoption of a Freedom of Information Law in Nigeria.

Following from this process, it initiated a vigorous campaign in 1999 to get Nigeria's National Assembly to pass the draft Freedom of Information Bill into a Law which would be assented to by the President, as required by the Constitution.

After more than 10 years of a somewhat frustrating experience in trying to get the government to enact a Freedom of Information law, MRA is now reviewing its strategies for trying to bring about transparency in government and governance. A critical question in that review exercise is whether it is really necessary to wait for the passage of the Freedom of Information Bill before citizens can begin to push their governments to be more open and transparent.

Therefore, while MRA remains committed to the campaign for the enactment of a Freedom of Information Law in Nigeria and similar laws elsewhere on the continent, it has also decided to explore existing laws, regulations and policy documents which provide some opportunities for citizens to obtain information and services from governments and to begin pushing vigorously for their effective implementation.

In spite of the legal status of the right of access to information and the steps so far taken within the African Human Rights system to give effect to this right, Africa appears to be lagging behind other regions of the world

in this global movement towards guaranteeing citizens' right of access to information, with West Africa being among the three worst off regions on the continent.

Very few countries on the continent have clear and specific guarantees of the right to information in their constitutions. Such countries include: Cameroon, the Democratic Republic of the Congo (DRC), Ethiopia, Ghana, Madagascar, Malawi, Mozambique, Senegal, South Africa, Tanzania and Uganda.

However, most of these countries do not have comprehensive freedom of information laws to elaborate this right. Only three of them – South Africa, Uganda and Ethiopia – have freedom of information laws to give effect to this right.

Although Uganda adopted its Access to Information Act since April 2005, full implementation is still being awaited more than five years after. The mandated Regulations which will bring the law into force are still not in place and so, despite having a constitutional guarantee and a freedom of information legislation, Ugandan citizens remain unable to enjoy the right of access to information.

Despite challenges of effective implementation, South Africa's Promotion of Access to Information Act (PAIA) of 2000, the first access to information law on the continent, also appears to be the most credible effort on the continent to empower citizens through access to information as a matter of right although there are recent moves in its Parliament to roll back this gain.

Ethiopia adopted the Law on Mass Media and Freedom of Information in 2008. Although the Ethiopian Law is merged with media legislation, it contains significant features of a Freedom of Information law.

Besides South Africa, Uganda and Ethiopia, the only other country on the continent with freedom of information law is Angola, which adopted its Access to Official Documents Law (Law 11/02) in 2005.

This means that only four countries out of the 54 in Africa have adopted freedom of information laws – that is about 7.4 per cent. No single country in three (West Africa, Central Africa, and North Africa) out of Africa's five sub-regions has a freedom of information law.

Zimbabwe has a law which it pretentiously calls the Access to Information and Protection of Privacy Act (AIPPA), adopted in 2002 and which it has adopted three times since then, in 2003, 2005 and 2008. But it is difficult to classify AIPPA as a freedom of information law in view of the scope of exemptions contained in the Law and several obnoxious provisions designed to control the media and repress media freedom in the country. It is geared more towards restricting the free flow of information than facilitating it.

Over the past 12 years, there have been vigorous efforts in four countries in West Africa to adopt Freedom of Information laws. These are in Ghana, Liberia, Nigeria and Sierra Leone. There are indications that the bill will soon become law in Liberia because there is no evidence of strong opposition to the bill. In Sierra Leone, the Freedom of Information bill has been in the legislative process now for over five years but is yet to become Law. The situation is even worse in Ghana where the Right to Information Bill has been awaiting legislative action for over seven years. But nowhere in the sub-region has the situation been more disheartening than in Nigeria, where a Freedom of Information Bill has been awaiting passage since 1999.

Many reasons have been advanced for the slow pace of adoption of Freedom of Information laws in Africa, including:

Lack of political will on the part of leaders who ideally have the responsibility for putting such laws in place.

A culture of secrecy in government which makes the notion of public scrutiny an alien concept.

A “messiah complex” among political leaders who believe that they have come to save the people and that they know what is best for them and have all the answers to the problems.

The limited capacity within civil society to conduct effective advocacy for the adoption of freedom of information laws in the respective countries beyond mere sloganeering.

Other competing priorities in many countries where the argument is frequently made that when placed against the need to provide other services and infrastructure such as health, education, water, roads, etc., the requisite institutional arrangements and resources necessary to adopt and implement freedom of information laws will be too costly.

The low levels of awareness among members of the public which severely limits public demand for adoption of freedom of information laws.

Regardless of the absence of comprehensive freedom of information laws in most countries, the project which led to this report sought to explore ways in which citizens can use other existing laws, regulations and policy documents to advance their rights.

In many countries around the continent, there are scores of legislation with access to information clauses or provisions under which government bodies, including ministries, departments and agencies, are obliged to provide information to their citizens either proactively or upon a request being made.

This project sought to identify such laws in Ghana, Liberia, Nigeria and Sierra Leone with the ultimate goal of testing how effectively they are implemented or respected by government officials with a view to empowering citizens in these countries to take advantage of such provisions to advance their human rights in a variety of sectors.

The report will be a valuable resource for citizens and other members of the public interested in exercising their rights of access to information or in testing the levels of transparency and compliance with laws among public institutions in Liberia.

It helps to identify the provisions or sections of laws, regulations and policies which require some public institutions to grant citizens or members of the public access to information directly or through which citizens and other members of the public can have indirect access to information, records and documents held by relevant public institutions.

We hope citizens and members of the Liberian public will take advantage of this report to push for information from public institutions.

Edetaen Ojo
Executive Director
Media Rights Agenda

Chapter One

1.0 The Liberian Legal System and Access to Information

1.1 Overview of the Liberian Legal System

Thanks to the establishment of the country by former slaves from the United States, made the legal system of Liberia to be patterned after that of the United States of America in the same manner as the country's political system, national language, etc

Liberia has a written constitution which constitutes the organic law of the nation. Written statutes made in keeping with the constitution are, along with unwritten customs and traditions, complementary sources of Liberia law. Further, the non-statutory law of England and the United States of America as well as the so-called rules and principles of equity applied by the courts of these countries are, under limited conditions, accepted as applicable laws in Liberia. Based on the latter, Liberia is said to be a common law country, meaning that the principles underlying its legal system are similar to and shared with England, America, and countries that are former colonies of Britain.

The first Constitution of Liberia was adopted in 1847, and remained in force until the bloody military coup of 1980 ("1980 Coup) which overthrew the then civilian government of William R. Tolbert and suspended the 1847 Constitution. The first Constitution remained suspended until 1986 when a new constitution backed by the military junta was adopted ("1986 Constitution"). The 1986 Constitution is the Constitution extant in Liberia. The 1986 Constitution retains a number of significant provisions in the previous constitutions, but also modified and introduced provisions aimed at addressing the problems experienced under the old constitution as well as during the military rule by decree.

1.2 Constitutional Guarantees of Access to Information

The Liberian Constitution is arguably a model of explicit provisions for guaranteeing access to information and the protection of freedom of speech and the press. In general, the Constitution explicitly establishes the followings: (1) freedom of and right to information; (2) Right to knowledge; (3) Freedom of expression; and (4) the obligations of government and officials of government to disclose and disseminate information about the government and its operations (including the obligation to disseminate the constitution throughout the country; the obligations to give a public account of public revenues, and the obligation to be transparent and open)

- (1) In language typical of other provisions of the Constitution, Article 15 of the Constitution expressly guarantees freedom of expression, which "includes freedom of speech and of the press, academic freedom to receive and impart knowledge, and the right of libraries to make such knowledge available."

The Liberian Legal System and Access to Information

‘There shall be no limitation on the public right to be informed about the government and its functionaries. Article 15 also speaks of the right to freedom of expression and the right to knowledge as fundamental to human existence.

The constitution also demands that even those who may come in conflict with the law be informed of their charges in order to provide them appropriate notice to defend themselves.

The constitution also upholds the right of public disclosure in the case of expropriation authorized for the security of the nation.

(2) The breadth and language of the various constitutional provisions in respect of access to information clearly indicate substantial fundamental guarantees for citizens’ right to access and use information for whatever lawful means. The language and scope of the constitutional provisions also evidence a clear intent to link access to information to guaranteeing fundamental and general human rights and also to further other objectives of good, accountable and transparent governance.

Notwithstanding the foregoing, it should be noted that statutes meant to provide details as well as give effect to the broad protective provisions of the Constitution have tended to do one or more of the followings:

1. Create ambiguity with respect to the meaning and intent of the Constitution;
2. Limit the scope or requirements of the Constitution; and/or
3. Fail or neglect to establish clear mechanism or obligation on the part of public entities to disclose or give access to information implicating individual freedom or public interest.

Further, in quite a number of instances, a statute will declare a right of access to information while at the same time it creates restriction and obstacles that effectively nullifies the grant of access. In yet some a few cases, some statutes prohibit access to information without any exception or any sensitivity to the Constitution. One of such statute is the Act of the National Security Agency. (see *infra*).

As a result the state of the law on access to information in Liberia is characterized by a curious parallel existence of both ⁽¹⁾ a very progressive constitution that guarantees access to information in extraordinary details and breadth, and ⁽²⁾ a number of statutes that limit, restrict and hinder access to information. This situation is made possible by the specific right of access to information guaranteed by the Constitution and vis-a-vis the actual working of the various branches and agencies of the Government, including the statute, rules, regulations and orders promulgated by the various branches and agencies of the Government, as shown herein below.

1 Article 15(a) (b) (c) (d)

2 Article 21(b) (f) (h)

Chapter Two

2.0 Access to Information in the Legislative Branch

The Legislature is the first branch of the Liberian Government. Like all other branches of the Government, the Legislature is subject to the provisions of the Constitution, including Article 15, which guarantees freedom of speech and of the press, academic freedom to receive and impart knowledge, and the right of libraries to make such knowledge available.

The Legislature is the one branch of the government truly representative of nation; its members are direct representatives of the people. It should therefore be obvious that the acts of the Legislature constitute public acts, and are within the public domain.

Access to information in the Legislature involves two related issues:

1. Access to completed act(s) of the Legislature; and
2. Access to deliberations and/or on-going work of the Legislature.

Unlike agencies and institutions created by statutes, the Legislature is a body created by the Constitution. Hence, its operations, including rights and duties are traceable primarily to the Constitution. This means that much of the laws relating to access to information in the Legislature is directly from the Constitution.

2.1 Scope and Application of the Legal Regimes Governing Access to Information in the Legislature:

In addition to its provisions relating to the functions of the legislature, the Constitution authorizes the Legislature to establish rules to govern and regulate its operations. Article 38 of the Constitution specifically provides that each house shall adopt its own rules of procedures, enforce orders. "All rules adopted by the Legislature shall conform to the requirements of the due process of law in this Constitution.

This means that the rules governing access to information in the Legislature consists of (1) applicable provisions of the Constitution and (2) Rules adopted by each House of the legislature. Because the provisions of the Constitution relating to access to information have already been surveyed, we will proceed to consider the rules of the Legislature, and then ascertain how those rules have reinforced (or conflicted) with the Constitution relative to access to information

Upon taking office in early 2006, the present legislature drafted and subsequently adopted their standing rules for the smooth conduct of its business. The House of Representatives adopted its separate rules while the Senate also adopted their rules. Key among other provisions, the rules separately provide for the followings: Open deliberations and Committee Hearings. These outstanding sections support constitutional provisions relative to public access to information as they compel the legislature to be open to the public.

Access to Information in the Legislative Branch

(a) Open Deliberations

The Standing rules of the Legislature calls for all legislative business to be held in open session, subject to an exception bordering on “confidential or Executive Business. This is a key access to information provision in the legislative process under the constitution.⁽³⁾ More specifically, such closed door session may be considering national security matters from the President or confirmation votes on executive nominees.⁽⁴⁾ But the confirmation hearing itself shall be public⁽⁵⁾ The rules provide notice as to the time the legislature meets: Tuesday and Thursday of each week 10am to 14hrs. It sets aside Monday and Wednesday for committee work and Friday for constituency.⁽⁶⁾ The rules also provide the daily work hours.

(b) Committee Public Hearings

The rules also demand that all committee hearings be open to the public. However, it makes an exception that where the committee determines that a public hearing will disclose ‘sensitive information which shall be harmful to the national defence and security of the Republic said hearing shall be closed to the public⁽⁷⁾ Once the time for hearing is determined by the committee, the Legislative Press Bureau issues a public announcement detailing the schedule of said hearing, the witness to appear, the time and the place.

(c) Budget Process

The budget, generally speaking is the president’s plan on how to finance sectors of the government operations. Once the budget gets to the House from the office of the President, it’s sent to the Committee on Ways, Means and Finance on its first reading. It is at the committee level that budget hearings are held in which the public participates.⁽⁸⁾ There isn’t a law that requires budget copies to be distributed to members of the public, but it has been a practice in Liberia for the budget bureau to distribute copies of the national budget to the media and civil society. More than that, the legislative committee invites members of the public from diverse backgrounds to bring to bear their perspective on the allocations contained in the budget. The invitations are usually attached to the copies of the budget. Budget hearings are carried out in the same manner as any other committee hearings. The House may decide to pass the budget after its committee’s recommendations and subsequently send it to the Senate for concurrence. A similar process takes place at the level of the Senate.

3 Article 38 *Each House shall adopt its own rules of procedure, enforce order, and with the concurrence of two thirds of the entire membership, may expel a member for cause. Each House shall establish its own committees and subcommittees; provided, however, that the committee on revenues and appropriations shall consist of one member from each county. All rules adopted by the Legislature shall conform to the requirements of due process of law in this constitution.*

4 Rule 42 sections (3)(4)(5)(6)(7)

5 Rule 45 section (2)

6 Rule 45 section (7)

7 Rule 2

8 Rule 19 Sections 3.

(d) Bills, Resolutions and Treaties

While in open session, the rules provide that every bill and resolution and treaties shall be read three times prior to their passage⁽⁹⁾

(e) Voting

Voting in the legislature while done by either yea or nay or raising hands, may be done in a secret ballot system. Here it is provided for that the Secretary of the Senate or the Chief Clerk of the House count the secret ballots and immediately announce the results in open session.⁽¹⁰⁾

(f) Impeachment

Liberia's constitution empowers the Legislature to prepare a bill of impeachment (House of Representatives while the trial of the impeachment lies with the Senate.⁽¹¹⁾ Under the rules of the Legislature, trial sessions of the senate shall be kept open.⁽¹²⁾ Under the Liberian constitution, the President, Vice President, Chief Justice and Associate Justices and judges of subordinate courts can be impeached. In line with the process, the House of Representatives introduces the impeachment bill, its managers who shall present the bill to the Senate shall exhibit the articles of impeachment in an open session of the Senate.⁽¹³⁾ Section 3 of the said rule gives the time and the frequency of the impeachment hearing, but it provides no public notice.

(g) Preservation of Legislative Documents

At the end of the tenure of each legislature, non-current records are transferred to the Centre for National Documentation and Research Agency for preservation.⁽¹⁴⁾

(h) Political Parties and Elections

Article 77 of the Liberian constitution provides for the establishment of political parties. They are principally organized to advocate the political opinions of the people. Similarly, Article 89 provides for the establishment of Elections Commission. The Commission is to regulate the activities of political parties and conduct elections.

Two key provisions compel the Elections Commission to act publicly. It is mandated to conduct elections⁽¹⁵⁾ and then publicly disclose the results of the polls.⁽¹⁶⁾

9 Rule 35 Bills and Resolutions, sections 2,3,4

10 Rule 44 section 1

11 Rule 28 section 4.

12 Article 43.

13 Rule 52 section 21.4.

14 Rule 52 section 2.

15 Article 77b

16 Article 83c

(i) Assets Declaration for Public Office Seekers

Political parties and candidates for public offices are required to declare their assets and liabilities not later than thirty days prior to the elections. The candidate shall publish these assets and liabilities before making submission to the elections commission. This provision is a key access to information clause in the constitution for individuals vying for public office. The disclosure goes to the sources of the funds and the other assets and the list of expenditures.

The constitution requires that the disclosures go beyond the election year. Political parties and independent candidates, it demands shall provide additional information regarding all funds received and expenditures made. In the case where they cease to exist as public officers they are still required to publish and submit final financial statement to the commission. ⁽¹⁷⁾

17. Article 83d

Chapter Three

3.0 Access to information in the Judicial Branch

The Judiciary Branch of Government has its primary duty in the adjudication of cases that come before it. ⁽¹⁸⁾ Article 65. Liberia's judiciary is split between the Supreme Court and the lower courts. Courts are principally there to protect the rights of individuals and no doubt, the constitution provides openness in their trial processes.

3.1 Scope and Application of the Legal Regimes Governing Access to Information in the Judiciary:

In the protection of the rights of those who may come in conflict with the law, the constitution provides that in the case of a search or seizure, a warrant duly supported by a solemn oath or affirmation must be provided. But most importantly the person subject to such warrant must be informed of the object of the search. ⁽¹⁹⁾

In the case of an arrest, the suspect must be informed of the detail of the charges to which he is expected to respond. A subsequent provision provides for public trial of those accused of crimes following an indictment by a grand jury. ⁽²⁰⁾

Open court trial is a fundamental element of justice. But it also, in the context of the foregoing discussion, meets the standard of public access to information unveiled in the judicial process. The underlining objective of a public trial is for the police, private investigators, the prosecutors and or state witnesses to make public the depth of information compiled in criminal or other trials in a community against a community member.

The constitution reinforces public access to court proceedings in a provision in which it outlawed the summoning or arrest of any person or authority on account of judicial opinions rendered or judicial act done in the course of a trial in open court ⁽²¹⁾.

3.2 Judicial Review and the implication on Free Speech and Access to Information

A review of the cases decided by Liberian courts falls short of finding cases directly bordering on access to information. Earlier, cases reviewed by Liberian lawyer, Cllr Tiawon Gonglo, largely bordered on freedom of the press and free speech. But the implications of such interpretation have had to affect access to information right. So this research re-cites a few of the cases reviewed by the country's Supreme Court, which in exercising its power of judicial review sets standards on various issues in society. Therefore, it is important to find out what the courts opinion has been on freedom of expression and vis-à-vis on access to information. The first case the Supreme

¹⁸ Article 21(b)

¹⁹ Article 21(c)

²⁰ Article 13(b)

²¹ Article 73

Access to Information in the Judicial Branch

Court decided regarding freedom of expression is the case: *Dennis v. Bower*. In that case Bower had filed an action of damages for slander against Brown alleging that the Defendant had spoken slanderous words about him, defendant was held liable in the lower court. This Supreme Court reviewed the judgment of the lower court holding that, "The mere effort to establish the fact that the words were spoken without proof that they were not true, did not establish anything at all, it only establishes its truthfulness without contradiction by the testimony.

The Court in this opinion went at length to expand on the right to freedom of expression. It held that,

The right to freely speak, write and print on any subject is a constitutional right which all may fairly exercise, but if the nature for so doing should appear to be malicious, responsibility attaches for the abuse of such right.³⁹

The Court also held that,

The Constitution and statute laws regard with sacred jealousy the right of free speech, the full expression of those words and opinions which are necessary to convey our ideas and feeling and meaning to each other. It is a privilege that no jury in the land, or court, has the right to suppress or circumscribe.⁴⁰

Further on the question of freedom of speech, the Court held that,

The duty of the Court is to guard with an eagle's eye the Constitution and laws, and only upon satisfactory proof a citizen is to be held responsible for an abuse of his constitutional liberties.⁴¹

It is important to underscore the fact that in 1861 when the Supreme Court decided *Dennis V. Bower*, statutes limiting freedom of expression, such as the criminal code of 1914, had not been enacted. Also most of the Justices of the Supreme Court at the time were first generation immigrants from the United States and may have been greatly influenced by the law of the United States, regarding freedom of expression.

The Supreme Court's opinion of 1861 in *Dennis V. Bower* remains a landmark case for the protection of free expression.

The Second major case in which freedom of expression became an issue is the case: *Sie V. Republic*, decided in 1954. This was a case in which Thorgue Sie and others were charged with sedition for allegedly making inflammatory remarks about the government of Liberia and writing letters to the President of Liberia in which they complained about the Probate Commissioner's refusal to register the articles of incorporation of the political party, as well as letter to the Secretary General of the United Nations Organization complaining about the attempt by the government of Liberia to deny

Access to Information in the Judicial Branch

them the right to register a political party, copies of which letter were sent to the British and United States governments. Sie and others were found guilty of sedition and they appealed to the Supreme Court.

In affirming the guilt of the defendants, the Supreme Court held,

A growing evil of this age which needs to be curbed, and which results either from ignorance or mis-conception of Section 15 of Article 1 of our Constitution concerning free speech and freedom of press, is the belief that the protection of the press and free speech guaranteed under the Constitution affords an unbridled license to speak, write, and publish whatever one desires to whether or not true, whether or not said expressions or publications may ruin individuals or cause the government to suffer disintegration and disruption. In our opinion the Constitutional protection guaranteeing freedom of the press and free speech does not give an unbridled license to write letters of the nature written in this case to the President of Liberia and to the United Nations.⁴²

The Supreme Court, later in the case: In re: *C. Abayomi Cassell*, said the following regarding freedom of speech and press:

Freedom of speech or of the press should not be interpreted as license to exceed the constitutional liberty a citizen should enjoy. The liberty of the press is the right to publish the truth with good motives, for justifiable ends, though reflecting on government magistracy or individuals.⁴³

This was contempt proceeding in the Supreme Court against Counsellor C. Abayamo Cassell for what the Court considered as showing disrespect to the Chief Justice and the Supreme Court. Counselor Cassel had attended a conference of the international commission held in Lagos, Nigeria in 1961 and delivered a paper that critically examined the Liberian judiciary.

The Chief Justice, A. Dash Wilson also attended the conference. Upon the return of the Liberian delegation, contempt proceedings were instituted against Counselor Cassell. In his defense Counsellor said that his action in Lagos, Nigeria was protected by the Constitution of Liberia which protects the right to speak and write freely.

The Opinion of the Court in the Cassell case on freedom of expression is a great departure of the Court from its operation the case *Dennis B. Bower* delivered a hundred years before the Cassell case. In the former case the Supreme Court greatly went at length to defend the Constitutional right to freedom of speech and press.

Access to Information in the Judicial Branch

In 1975, the Supreme Court maintained its position on the limitation of freedom of expression as held in the Cassell case. The Supreme Court in the case: *In re: Albert Porte et. al.* held that, "The right of free speech and publication guaranteed by the Constitution is not an absolute right in all circumstances."⁴⁴

In this case the Supreme Court held the editors of *The Revelation* in contempt for publishing a critical article on a matter that was on appeal before the Supreme Court. The newspaper had critically commented on the manner in which a libel suit filed by Mr. Stephen Tolbert, the brother of the President of Liberia at the time, against Albert Porte, pamphleteer, had proceeded in the lower court. The case ended with a judgment in favour of the plaintiff and the defendant appealed to the Supreme Court.

It was while the matter was pending before the Supreme Court that *The Revelation* critically analyzed the proceeding before the lower court. The comments, therefore, were not about the Supreme Court but the lower court in which the libel case was earlier disposed of. However, the Court maintained:

We hold that the Supreme Court of Liberia has a responsibility to protect our political society generally; but particularly it is our responsibility and duty to uphold and protect the authority of the Court, and the judicial system. Unwarranted attack upon the judiciary by any person, or newspaper, is an attempt to undermine the very foundation of the third branch of Government.

This holding of the court ran counter to the 1847 Constitution of Liberia, which at the time was in force. Article 15 of the Constitution, as hereinabove quoted provides:

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 printing press shall be free to every person, who undertakes to examine the proceedings of the Legislature, or any branch of government; and no law shall ever be made to restrained rights thereof.

It is difficult to understand why the Supreme Court instituted contempt proceedings against the editors of *The Revelation*. First, the comments in the newspaper were made after the matter had been disposed of by the lower court. Secondly, the comments which the Supreme Court frowned upon were not made about the Supreme Court, but the lower court in which the case was heard. Thirdly, the statements could not be considered pre-judicial to the Supreme Court because unlike the lower courts where some cases are decided by the Jury, all cases in the Supreme Court are decided by Justices of the Supreme Court. Consequently, unlike jurors, who are non-lawyers, Justices of the Supreme Court cannot be influenced by newspaper articles or radio commentary. The Porte case may have been influenced more by political considerations than by genuine interpretation of the Constitution.

Chapter Four

4.0 Access to information in the Executive Branch

Under the Liberian constitution, the Presidency is the Executive Branch of government generally speaking. The president embodies the state. He or she is the head of the government and Commander-in-Chief of the Armed Forces. The President carries wide ranging power, include appointing heads of ministries and agencies of government, all of who constitute the Executive. ⁽²²⁾

Therefore access to information under the Executive Branch of Government relates to:

- (1) The President
- (2) Statutory executive creatures like ministries, commissions, public corporations and agencies

4.1 (1) Scope and Application of the Legal Regimes governing access to information in the Executive under the Presidency

There are more relevant provisions in the Liberian constitution that require the President to disclose information. The constitution imposes a duty of public disclosure of “a true and correct account of funds collected” to the community or locality. The article and its subsequent provision provides that annually a statement and account of the receipt and expenditure of all public monies shall be submitted by the office of the President to the Legislature and published⁽²³⁾.

Similarly Article 58 demands of the president to present his legislative program and report to the legislature the state of the Republic on the fourth working Monday of each year. It requires that during the reporting time, the president is also under obligation to present the economic condition covering expenditure and income⁽²⁴⁾. Thereafter, the president causes the budget to be prepared and submitted to parliament for debate and scrutiny.(see budget process under Legislature). While Article 58 underscores accountable leadership, the constitution also emphasizes the ‘maximum feasible participation’ of the Liberian people in the management of the national economy and natural resources of Liberia. In Article 7, it called for ‘the maximum feasible participation of Liberian citizens in the management of the national economy under condition of equality as to advance the general welfare of the Liberian people and the development of Liberia .’

22 Article 54, (a)(b)(c)(d)(e)(f)

23. Article 34(d)(i)(ii)

24 Article 58,

Emergency Power

In the preceding discussions, we noted the wide ranging power of the President. This power includes the declaration of a State of Emergency. However the constitution requires the president to disclose to the legislature the basis of a state of emergency not later than seven days as of its declaration.⁽²⁵⁾

Constitutional Amendments

The constitution also demands that constitutional amendments wherever they originate must be justified in a statement published and made known to the people.⁽²⁶⁾

4.2 (2) Scope and Application of the Legal Regimes governing access to information in the Executive under statutory sectors

Statutes are an extension of constitutional provisions. The former are more detailed and are intended to give effect to the constitutional provisions. But over time, succeeding administrations have created statutory agencies of wide ranging powers to give legal force to the intent of the institutions they seek to create. Most of these statutes have had crippling effect on access to information.

(a) The Tax Code

The Tax Code of Liberia governs general issues of taxation in Liberia, providing rules and penalties in the application of the country's tax collection process.⁽²⁷⁾ The Tax Code is administered by the Ministry of Finance. It contains a provision for public disclosure through annual publication, but also contains restrictive clauses forbidden disclosure of information. Under section 54, it imposes restriction on individual tax return information⁽²⁸⁾. A few exceptions are provided to facilitate law enforcement, audit and custom operations. There is no exception that makes the public interest a case for disclosure of an individual's tax return information. This hinders accessing tax records of non-elected officials and state parastatals.

(a) General Rule. A tax payer's tax return,, the information contained therein, and any other information obtained from the taxpayer or about the taxpayer in the course of the tax collection, audit , investigation or enforcement process is confidential. No officer, agent or employee of the Ministry of Finance and the Ministry is permitted to disclose confidential information received in an official capacity.

25 Article 88

26 Article 92

27 Phase One : Government of Liberia Reform Tax Code, July 2000

28 Section 54. Confidentiality of Tax Return information

Access to information in the Executive Branch

(b) Under the provision, exceptions are provided to the extent that the taxpayer may consent to the disclosure of the information or an official or officer may disclose confidential information to:

- 1. Other agents or employees of the tax authority in the course of and for the purpose of carrying out their official duties*
- 2. Law enforcement agencies, for the purpose of the prosecution of a person who has committed a tax violation or offenses*
- 3. A court, in a proceeding to establish a tax payers tax liability, responsibility for tax violation or offenses or in a criminal case*
- 4. The tax authority of a foreign country in accordance with international treaties or agreements*
- 5. Government financial authorities of the Republic of Liberia to the extent necessary in administering the law on budget*
- 6. The custom authorities for the purpose of administering the customs legislation and also to authorities that have the right to administer taxes according to this code, or for the purpose of administering those taxes.*

(c) Duty of Persons to whom Information is disclosed

The restriction placed on acquiring taxpayer's tax return information is extended to persons who receive the information as well. The restriction is found in the provision-Duty of persons to whom Information is disclosed.⁽²⁹⁾ Persons serving in their official capacity who receive said information are forbidden to disclose said information.

(b) Public Reports

Public Report is the only provision of the tax law of Liberia that provide for public access to information. In the provision, the Minister of Finance is obligated to make an annual report detailing the enforcement of the tax code and the revenue collection, matching same with sector areas of taxpaying entities⁽³⁰⁾.

²⁹ Section C *Persons who receive information under subsection (b) shall maintain secrecy regarding the information, except to the minimum extent necessary to achieve the object for which disclosure is permitted. Except for information received under the exceptions listed in subsection(b), a person who receives information the disclosure of which is regulated by this section may not disclose the information and must return documents reflecting the information to the Minister.*

(d)Penalties. Any person who discloses confidential information in violation of this section is guilty of a criminal offense and if convicted is subject to a penalty of up to \$800,000, a term of imprisonment of up to one year, or both.

³⁰ Section 57. Annual Report. *The Minister is required to make public an annual report on the enforcement of this code and the revenue collected. The report shall include information showing the amount of tax revenues collected from each sector of the economy under each type of tax. The report shall also contain information showing the revenue foregone as a result of concession and investment incentives having a tax effect. The Deputy Minister shall provide the Minister with information within the purview of the Ministry as is necessary for the preparation of this report.*

(c) The Central Bank of Liberia

The Central Bank of Liberia The Central Bank succeeded the National Bank of Liberia as an institution of the government of Liberia to achieve and maintain price stability in the Liberian economy by devising and pursuing policies to preserve the purchasing power of the national currency⁽³¹⁾.

The Central Bank Act contains a strong provision restricting the disclosure of what is referred to as ‘non-public material information’. There is no definition of non-public material information under the act and the vagueness in the term gives leverage to the authorities of the bank to classify important public information into ‘non-public material information’ and deny access. Under section 18, employees of the Central Bank are forbidden to divulge information. To do so will be to breach the oath of fidelity they swore to upon taking office⁽³²⁾.

Exceptions are provided in cases where there is a court trial, an audit and for supervisory inspections. It may be at the level of a court trial that the public access may have access to information.

Two provisions of the Central Bank Act guarantee public disclosure right.

The first Section 36 of the Act provides for the Bank to give information to the public. However, the provision makes it optional for the provision of relevant information it needs to know.⁽³³⁾

31 An Act To Authorize the Establishment of the Central Bank of Liberia, approved March 18, 1999

32 Under section 18, Oath of Fidelity:

1. Every Governor, officer, employee or agent of the central Bank shall take an oath of fidelity and secrecy in the form prescribed by the by-laws.
2. No person who serves as a member of the Board of Governors or staff of the Central Bank, or as an auditor, or agent of the Central Bank shall in a manner unauthorized by law
 - (i) Permit access to, disclose or publicize non-public material information which he has obtained in the performance of his duties at the central Bank.
 - (ii) Use such information or allow such information to be used for personal gain
- (3) Persons enumerated in subsection 18(2) may disclose none—public material information outside the Central Bank, in accordance with procedures established by the Central Bank, but only if:
 - (i) in accordance with the express consent of the person to whom the information relates
 - (ii) in performance of a duty to the public to make disclosure, inclusion to aid law enforcement and on the order of a court of competent jurisdiction other persons of competent authority;
 - (i) to the external auditors of the Central Bank ;
 - (ii) to foreign financial institutions supervisory authorities; or
 - (iii) the interest of the Central Bank itself in legal proceedings requiring disclosure

33 The Central Bank may provide information to the public through publication in the Gazette of prudential guidelines and instruments, issued to financial institutions in respect of the manner of disclosure to the public information such as:

- (i) The making of advances, whether by loans or overdrafts and investments;
- (ii) The discounting of bills and notes
- (iii) The issuing of letters of credit
- (iv) The granting of acceptance and other credit

Access to information in the Executive Branch

The Second makes an obligation for the bank to publish annual reports and statements on its operations and the state of the economy⁽³⁴⁾.

(d) The National Security Agency

The National Security Agency ⁽³⁵⁾ is the Government of Liberia security arm responsible for intelligence gathering. Under its Act, no exception is made as to the information not to be disclosed. Not only ordinary information shall not be disclosed, the Act creating the National Security Agency grants it power not to make disclosure on its financial operations. This law puts the National Security Agency above public scrutiny. The law provides that the President who is the legal signatory of the account of the NSA shall also appoint the auditor to examine the accounts of the agency. There is no provision for public access to information. It maintains that officers of the Agency are trustee of state secret and as such forbidden to disclose information to the public⁽³⁶⁾. As if the shield provided the National Security Agency is not enough, it is further granted independence from general government financial arrangements ⁽³⁷⁾

34 Section 49. Transmittal of Annual Report and Statements

The Central Bank within 30 days after the close of each financial year, submit to the Government and the Legislature an Annual report which shall contain:

- (a) A report of its operations and affairs during that year; and
- (b) A report on the state of the economy, which shall include information on the banking system, growth in the monetary aggregates, financial market developments, balance of payments performance and the activities of the central bank
- (c) The Central Bank shall as soon as possible after the least working day of each month, but in any event within (15) working days, prepare summary financial statements as of the end of that month.
- (d) The Central Bank may also publish such other reports and studies on financial and economic matters as it may deem appropriate.

Section 51 Collection of statistical Information

3. The Central Bank may publish information and data that it collects, in whole or in part, in aggregate form.

35 An Act Repealing Sub- Chapter D of Chapter I, part 1 and Sub-Chapter B of Chapter 22, Part II of the Executive Law in Relation to the Executive Action Bureau and the National Bureau of Investigation and Creating the National Security Agency

Approved May 20, 1974.

36 Section 2.55 Every officer and employee of the National Security Agency shall be deemed a trustee of the secrets of the Republic and when entering the duties of the service shall be sworn by the Director not to divulge any information which has come to his knowledge by reason of his employment with the Agency except as required in the course of duty

37 Section 2.56 To preserve the National Security Agency from public disclosure of its operations, the Agency is authorized to withdraw to the extent necessary for the maintenance of secrecy its yearly appropriations through the Ministry of Finance and deposit them in the Agency's own checking account in a bank within the Republic to be designated by the President as the legal depository. The Agency is also authorized to develop and maintain its own procurement, accounting and auditing system separate from those of the general Government. Its accounts shall be audited yearly or as circumstances may require by an auditor appointed by the President of Liberia.

(e) National Security Council of Liberia

The National Security council ⁽³⁸⁾ is a conglomerate of heads of key security agencies of the Government of Liberia. The President of Liberia chairs the council with the National Security Advisor serving as the secretary.

Like the National Security Agency, the National Security Council ⁽³⁹⁾ grants blanket non disclosure privilege to the council. All members of the council are trustees of state secrets and are to refrain from divulging any information to the public. Its financial operations are straightly protected from disclosure⁽⁴⁰⁾. The act of the council was passed in 1999, the same year the Taylor administration was battling rebels in the North of the country and that it appears to be part of the efforts to shield the government's financial operations relative to the security operations.

(f) The National Bureau of Investigation

The National Bureau of Investigation (NBI), is principally responsible for probing economic crimes and compile statistics⁽⁴¹⁾. It departs from those of the council and the National Security Agency, NSA.

Under the duties of its director, it is provided that he shall make annual reports⁽⁴⁴⁾

The Director shall compile and publish an annual report containing criminal statistics.

This is the only provision of the law that provides for public access to information.

38 *An Act to Establish the National Security Council of the Republic of Liberia*
Approved March 12, 1999

Section 7 Every member, personnel or employee of the National Security Council shall be deemed a trustee of the secrets of the Republic and when entering the duties of the Council shall be in the case of the member sworn by the Chairman and in the case of the personnel and employees, by the secretary, not to divulge any information which has come to his knowledge by reason of his membership or employment with the Council except as required in the course of duty. A violation of the oath required by this section shall subject the offender to a fine of One hundred Thousand or up to ten years imprisonment or both.

39 *Section 10. Finances:*

To ensure the protection of its operations from public disclosure, the National Security Council shall be authorized to withdraw on a quarterly basis allotment to the extent necessary for the maintenance of secrecy and or all of the funds appropriated by the legislature and deposit these funds in a separate account in a bank designated by the council with the approval of the Chairman who shall be the President of the Republic of Liberia.

40 *Act to Amend the Provisions of the New Executive Law to provide for the re-establishment of the National Bureau of Investigation(NBI)*

41 *Section 22.51 (d) of the NBI ACT, Duties of the Director provides for an annual report*

(g) The National Defense Ministry

The National Defence Ministry⁽⁴²⁾ handles the recruitment, training and administering the affairs of the Armed Forces of Liberia, the AFL.

The only provision contained in the Act of the National Defence Ministry relative to public disclosure is annual report to the National Legislature⁽⁴³⁾.

The act provides that the annual report by the Minister of National Defence to the Legislature shall contain abstracts of reports from each reporting unit commanders.

Most statutes creating security agencies contain little or no provision for giving information to the public. They instead block access.

(h) Forestry Sector

The National Forestry Law of 2006⁽⁴⁴⁾ represents the governing legal instrument of the country's forestry sector. The law has three sections requiring public disclosures. This law was passed as part of efforts by the new government of Ellen Johnson Sirleaf to convince the international community of Liberia's seriousness to reform the management of the forest sector and subsequently lift the UN sanctions on Liberia's timber.

These provisions and many others support public access to information and encourage vigorous public debate about community ownership and benefit derived from the forest resources. The law comes into being following the forceful removal of Charles Taylor as President of Liberia accused among other things of using timber resources to fuel conflict in the region.

The first major provision of the law is the publication of payments⁽⁴⁵⁾ realized from forest related contracts. Under the provision, holders of the two biggest forest contracts, Forest Management and Timber Sale Contracts shall provide information in any widely circulated newspaper in Monrovia of pertinent information, including the holder's name, area of operation, payments made to the government under the contract and the date of payment.

42 An Act to amend Chapter 24 of the New Executive Law, Title 12 of the Liberian Code of the Laws Revised, published on June 9, 1972, creating the Ministry of National Defense within the Executive Branch of Government by adding there to twenty new Sections Establishing a Navy and Air Force within the Armed Forces of the Republic of Liberia and Repealing Sections 24.1, 24.3 and 24.4 and Substituting new Sections thereto relating to the Ministry of National Defense

43 *Section 2. Report, Duties of the Minister of National Defense: Annual Report*

44 *An Act Adopting the National Forestry Reform Law of 2006, Approved September 2006*

45 Chapter 5: Commercial and other use of forest resources. Section 8.5 Publication of Payments

Access to information in the Executive Branch

This section requires that 'Each holder of a Forest Management Contract or a Timber Sale Contract shall , no later than on March 15(for the months of July through December) and September 15(for the month of January through December), ensure that a notice containing the following information is published in a widely circulated newspaper in Monrovia:

- a. The Holder's name;*
- b. A brief description of the area covered by the Holder's Forest Resources License;*
 - a. A list of all payment and other considerations provided by the holder to the Government under the Forest Resources Licence, and*
 - b. The date of each payment.*

Section 18.15 is another provision of the law that grants public access to information. Under the section, the Forestry Development Authority will grant access to members of the public to read and copy all documents and other information in its possession including audits⁽⁴⁶⁾. But it also provides for documents that are not covered under this section of public disclosure. Such exceptions relate to information that constitute confidential business information, the information whose release will promote illegal use of natural resources and or information whose release will interfere with the procurement process.

- (a) 46 Section 18. 15 *The Authority shall grant and facilitate free public access to read and to copy all documents and other information in its possession, including all audits, all forest Resources License fee invoices and fee payment information, business and forest management plans, strategies, resolutions from the Board of Director, Public comments reports inventories, regulations, manuals, databases, contract maps, and contract with the following information redacted:*
- (i) Information who release is likely to promote illegal use of natural resources*
 - (ii) Information whose release could threaten the continued existence of a sensitive environmental resource, such as an endangered species.*
 - (iii) Confidential business information that the authority must protect under subsection (b) through (d) of this section.*
 - (iv) Information whose release is likely to interfere with law enforcement*
 - (v) Information whose release is likely to interfere with the fair and competitive functioning of a procurement or concession process*
 - (vi) Information that the authority is prohibited from releasing under provisions of other laws.*
 - (vii) Personnel files and information regarding employees and applicants for employment, except for vacancy announcements, organizational charts, personnel directories, and information on pay grades or compensation.*
 - (viii) Communications between the Government and its attorneys, the work product of Government attorneys and communication aimed at the settlement of a dispute (but not including an agreement ending a dispute).*
 - (ix) Information whose release is likely to compromise national security.*
- (b) *A person submitting information to the Authority may accompany the information with a letter to the Authority identifying any part of the information that the person considers to be confidential business information, explaining why secrecy of the information is necessary to protect the commercial interest of the person , and requesting the Authority not to release the information to the public. The person submitting information bears the burden of supporting the request for secrecy.*

Access to information in the Executive Branch

Those who submit information to the FDA are required to state which part of the information that is confidential and shall have the burden to justify the basis of secrecy.

- (c) The Act provides exceptions regarding information that it may release to the public⁽⁴⁷⁾.

The Act also grants access to information to members of the public through reports⁽⁴⁸⁾.

It provides that a. Each year, the Authority shall submit to the Board and make available to the public an enforcement report listing:

- (i) The names of all persons identified by the authority as violators under this Chapter in the past calendar year.
- (ii) The date the Authority detected any violation by each person and
- (iii) A description of the nature of each violation

(i) Governance Commission

The Governance Commission⁽⁴⁹⁾ was created as an institution to identify, advice on and design necessary policies relating to good governance, and submit same for approval and implementation by the government of Liberia. What is of interest is the commission whose root is tied to reforming governance does not have within the act creating it, sufficient guarantees for public access to information or public access to the GC own records. In one provision 8.3 it provides:

The Commission shall be subject to the annual auditing as prescribed by the General Auditing Commission, and shall within three months as of the end of each fiscal year, submit its findings to the Legislature and the President and thereafter publish it.

Under Part IX Reporting and Budgeting it is obligated to give information, not to the public but to the President and to the legislature upon request. An institution created to initiate reform measures should itself lead the process of reform by being open in its operations and dealings as to enable the public to assess.

Four provisions follow:

- 9.1 The Commission shall operate an independent budget and shall submit an annual financial report of its expenditure activities to the President and copies to donor partners who have provided support during the period.
- 9.2 The Commission shall submit annually to the President a report which shall include the assessment of the impact of government's initiative, strategies, and recommendations for promoting good governance.

47 (18.5c)

48 (20.11 Annual Report)

49 An Act of the Legislature to establish the Governance Commission Approved October 9, 2007

Access to information in the Executive Branch

- 9.3 Notwithstanding Article 1 above, the Commission shall report quarterly to the President on progress and in the pursuance of its mandate.
- 9.4 The Commission shall submit such and other reports as are requested by the Legislature.

There is no provision that directly grants public access to information.

The Anti Corruption Act ⁽⁵⁰⁾ is one of several laws put in place by the Ellen Sirleaf Administration as part of the overall reform process and a major anti corruption drive of the administration.

The Act does not go far in encouraging individuals suspicious of wrongdoing in a public or private place to freely provide information.

Section 10. 7 of this law under Part X: Conduct and Coordination of Investigation tend to discourage members of the public, or employees in public or private institutions from speaking out on corrupt practices. It provides that: individual or individuals, institution or institutions providing false and misleading information to the commission against other individual or individuals, institution or institutions shall themselves be prosecuted for providing misleading information.

Most whistleblower laws refrain from prosecuting informers on account of false or misleading information. Instead they speak of a 'reasonable believe' as the basis for reporting corrupt acts. Because of the complex nature of such crimes, it is difficult for anyone observing same to obtain prima facie evidence before speaking out.

In section 9.3 of the proposed Freedom of Information Act for Liberia, under Chapter 9: Protection from Civil or Criminal Liability, whistleblowers are granted protection. The section provides that 'Nothing contained in any Act, Law, Regulation or any other enactment, shall prejudicially affect any person in the employment or service of a public authority or a private body to which this act applies who without authority discloses to any person any record, document or information which he or she reasonably believes to reveal

- (a) The violation of any law , rule or regulation
- (b) The mismanagement, embezzlement, or gross waste of public funds, fraud, and abuse of authority or
- (c) A substantial and specific danger to public health or safety.

The Act provides for Annual Reports ⁽⁵¹⁾ as a key public access provision.

50 An Act to Establish the Liberian Anti-Corruption Commission, Approved August 21, 2008

51 Part XIV, Section 14.4 *The commission shall publish its annual report and other reports for the consumption of the general public. The annual reports and other reports of the commission may be published in the local print and electronic media and on the internet and in such other manner as the commission may determine , taking in consideration the need to reach more members of the public.*

Section 14.1 of the same law also provides that the commission shall within three months after the end of any fiscal year, submit to the President and the Legislature an annual report, providing a summary of the cases investigated, the amounts involved and the state of the commission itself.

(j) Public Procurement and Concession Commission

The PPCC Act ⁽⁵²⁾ was put in place as part of efforts to regulate all forms of public procurement and concessions in Liberia to ensure transparency and accountability in the awarding of contracts.

It was instituted by the National Transitional Government of Liberia which came to power under the Accra Peace Agreement signed by parties to the latest fighting in Liberia in 2003.

Most of its provisions do not seek to give information directly to members of the public, except subsection 3 *infra*. Bidders of contracts and members of the legislature constitute the principal recipients of information under this act ⁽⁵³⁾. Several other provisions however, obligate the commission to publish relevant information routinely.

The Commission is also under the act, obliged to furnish information upon request. Under the Act the Commission may refuse to provide information as spelled out in subsection 5 below.

The law mandates the procuring entity to promptly publish in the procurement Bulletin, Gazette and any newspaper of wide national circulation notice of each contract award in which the price of the contract exceeds the threshold set in the Schedule, indicating the contract price and the name and address of the successful bidder.

The procuring entity shall preserve all documentation relating to the procurement proceedings in accordance with applicable rules concerning archiving of Government documentation, but at a minimum it shall be kept for a period of six years following the date of final completion of the procurement contract, or the date of rejection of all bids or cancellation of the proceeding as the case maybe. ⁽⁵⁴⁾

In addition to the document referred to above, the procuring entity shall prepare and maintain a summary report of the procurement proceedings, including to the extent applicable:

- (a) A description of the object of the procurement;
- (b) A list of the participating bidders, their profile and qualification, and the qualification criteria applied;

52 An Act Creating the Public Procurement and Concessions Commission, Approved September 8, 2005

53 Annual Reports and Answerability to the Legislature

54 Section 43(1) Record and Reports of Procurement

Access to information in the Executive Branch

It provides that information on bid, proposal, offer or quotation accepted or after procurement proceedings have been terminated without resulting in a procurement contract shall be made available to a person who requests same.

The portion of the record referred to in paragraphs(e),(h)and (i) of subsection (2) shall on request, be made available to suppliers, contractors or consultants that submitted bids, proposals, offer or quotation or supplied for pre-qualification, after a bid , proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.

5. The procurement entity shall not disclose
 - (a) Information, if its disclosure will
 - (i) be contrary to law
 - (ii) Impede law enforcement
 - (iii)Not be in the public interest
 - (iv)Prejudice legitimate commercial interest of the parties, or
 - (v) inhibit fair competition under this act

Presentation of Concession Option to the Public

A concession Entity which shall, pursuant to the receipt of the certificate for concession undertake public stakeholder consultations as part of the concession implementation process.

Information at Stakeholder Forum

At the stakeholder forum, the concession Entity shall at least provide information on the following:

- (a) The strategic importance of the project
- (b) The extent of investment or private resources ie financial, human etc to provide the needs of the community
- (c) The technical and financial feasibility of the project
- (d) Measures instituted and or may be instituted to address any environmental challenges and adverse externalities for the population
- (e) Any other reason that may justify choosing the concession option

Inspection of the Records

The records shall be made available for inspection by the Commission and the Auditor-General or any person(s) duly authorized by the Commission or relevant Government authority.

This provision seems to be a very important aspect of this Act in granting access to public information.

Mode of Publication

The commission may issue guidelines regarding publications of the General Nature of Investment Opportunity, Expression of Interest or Request for Pro

Requests for Information by the Commission

Under this provision, the commission has the power to request information from a procuring entity. The provision provides as follows:

Every procuring entity shall provide the commission with such information as the commission may require in writing, regarding procurement of concession engaged in by the entity

140 Public Access

The Executive Director of the Commission shall ensure that all administrative rulings of the complaints, appeals and Review Panel and directives of the commission that are of general application under this Act are promptly made available to the public.

Thresholds

1. Contract awards shall be published when the estimated value of the contract is above:
 - a. In the case of contracts for the procurement of goods, US\$25,000
 - b. In the case of contracts for the procurement of services, US\$10,000
 - c. In the case of contracts for the procurement of works, US\$50,000

(i) Investment

The National Investment Commission ⁽⁵⁵⁾ is the agency of the government of Liberia responsible for the encouragement, promotion and coordination as well as assisting in the development of all investments in the country.

Under Section 55.8-Annual Report- the 'commission through its Chairman shall make an annual report to the President of the Republic of Liberia and to the Legislature. It shall submit such other reports as are requested by the President of the Republic of Liberia as the Chairman shall deem necessary.

In section 55.5 Confidentiality of activities of the National Investment Commission, the Act provides: All information furnished to the National Investment Commission directly related to an investment proposal shall be absolutely confidential and shall

⁵⁵ An Act Creating the National Investment Commission Repealing the Act of the Legislature Creating the Liberian Development Corporation, Transferring the Assets of the Liberian Development Corporation to the National Investment Commission and Transferring the Functions of the Concession and Investment Commission and the Secretariat of the said Commission to the National Investment Commission. Approved September 6, 1979

not be disclosed or published by the National Investment Commission. Any officer or employees of the National Investment Commission who shall violate these provisions shall be subject to dismissal from office and shall be prosecuted under these provisions of the law.

(j) Commerce

Like many of the government ministries, the act Creating the ministry of Commerce and Industry⁽⁵⁶⁾ provides on a limited basis public access to information. Section (b) under the duties of the Minister mandates the minister to collect, evaluate and publish data pertaining to commerce and industry. No specific details are provided as to what kind of information the ministry is under obligation to provide to the public.

(k) Transport

Access to information under this Act of the Ministry of Transport ⁽⁵⁷⁾ is provided faintly under the functions of the Ministry in which it's obliged in section (c): To collect, collate, evaluate and periodically publish such data relating to land, rail, sea and air transport services as well as insurance, as well as the maintenance of meteorological services.

(l) Communication Regulatory Commission

Under Section 211(k) a. Purpose of the Communications Commission ⁽⁵⁸⁾, 10, the Act provides for the commission: To prepare and publish annual reports describing the Commission's activities, achievements, technical development and any changes in the general policies relating to telecommunications services and the future plan of the commission

(m) Communication Regulatory Commission

There appears to be a second Communication Regulatory Commission ⁽⁵⁹⁾. This Act gives the Commission sitting within the Ministry of Post and Telecommunications to most importantly license media institutions.

56 An Act to Amend the Executive Law Title 12 of the Liberian Code of Law Revised to create the Ministry of Commerce and Industry

57 An Act to Amend the Executive Law Title 12 of the Liberian Code of Law Revised to create a Ministry of Transport within the Executive Branch of Government and to further Amend certain provisions of the New Executive Law to provide for the Detachment and Transfer of certain Bureaux with Ministries of Government. Approved: August 25, 1987

58 An Act to Amend Chapter 14, Section 211(k) and section 12 of the Executive Law Reorganizing the Ministry of Post and Telecommunications to Effect the Removal of All Telecommunication functions from the Ministry to a Newly Created Communication Regulatory Commission Approved September 2004

59 An Act Establishing

Access to information in the Executive Branch

This Act falls far too short of the growing international standards relaxing regulation of print media institutions. That freedom of speech constitutes fundamental human rights that needs not be regulated has been a profound democratic tenet.

The departure with the electronic is shielded in the fact that the airwaves belong to the state and ought to be regulated in respect only to avoid interference of frequencies. However contents remain an area of deregulation. This act, quite to the forgoing analysis provides no exception. This makes it troubling.

Section one (1) of the Act provides:

1. To promulgate policies and regulations designed to safe guard Liberia's sovereignty in respect of changing communications technologies in the air space and otherwise
2. To devise policies and /or regulations to govern the creation, establishment, and operation of all electronic and print media within the territorial confines of the Republic of Liberia.
3. To monitor, evaluate, and license all media institutions and persons utilizing the instrumentalities of electronic and print communications and their ancillary facilities and services.
4. To appraise and review the programs and activities of all existing media institutions and or persons possessing communications equipment with the view of reflecting the socio-economic political and cultural realities in Liberia.

A further reading in Section five (5) of the Act reveals an even more troubling provision:

The Commission, through the Ministry of Post and Telecommunications, is hereby vested with the authority to impose punitive measures, to include fines, revocation of license and or permit any violator of its policies and or regulations. The decision of the commission in all matters of violation shall be appealed to the Circuit Court of Competent jurisdiction.

The Commission applied this provision first in 1989 when it revoked the licence of the then Roman Catholic Church run ELCM, now Radio Veritas. The government argued that ELCM Community Radio had broadcast that several persons had died at the Samuel Kanyon Doe Sports Complex in Monrovia in an international encounter.

Again, in 2000 the Administration of Charles Taylor through the Postal Ministry revoked the licence of Radio Veritas and the Foundation Hirondelle supported Star radio. The government argued that Veritas and Star were broadcasting filth intended to cause chaos. The state also claimed that Veritas had failed to stick to religious broadcast in line with its license granted it by the Ministry. For Star radio the government claimed that the station did not have a frequency of its own, except that it was operating under the frequency of another station, Radio Monrovia, two of which had collaborated in the broadcast before star moved to its own complex. The main reason for the revocations was that the Taylor administration was not pleased with the broadcast of these stations.

A National Communication Policy and Regulatory Commission (1989)

(n) The Liberia News Agency

LINA⁽⁶⁰⁾ represents an extension of state machinery to propagate its policies throughout the country and outside. All its directors are named by the president (Section 68.2) while the Ministers of Information and Postal Affairs serve as Board Chair and Co-Chair (68.4)

respectively. Its most important provision that outlines its functions of feeding public information is contained in: Section 68.3. Functions of the Agency-The Agency shall collect and disseminate News nationally and internationally, and shall have such authority and power to enter into mutual agreements with other News Agencies for the exchange of News. News As used herein shall include stories collected by reporters, press releases, interviews, feature articles and information on foreign exchange, economic affairs, social and political activities. The agency shall establish bureaux in all political sub-divisions of the Republic of Liberia which shall be staffed with professional personnel.

(o) Liberia Institute for Geo Information Service

The LIGIS⁽⁶¹⁾ provides sufficient guarantees for the public to access information it may have in its possession: LIGIS is responsible to ‘organize, maintain and ensure free access to a central depository of data, statistical reports, spatial information products such as maps and geo reference list, publications and documents from both within and outside of Liberia⁽⁶²⁾.

Publish as its regular output a monthly statistical bulletin, a quarterly statistical digest, an annual statistical abstract, an annual economic survey and an annual statement of national accounts as sources of official statistics of Liberia.

Design the scope and content and organize the time schedule for the release of publications in items.

The Act restricts the use of information it collects from being published or disclosed by other institution or person except LIGIS alone. Further restriction applies to individuals in the employ of the institute who may choose to give information before publication for personal gain⁽⁶³⁾.

60 An Act to Amend the New Executive Law Title 12 of the Liberian Code of Law Revised, To create the Liberia News Agency, LINA within the Executive Branch of Government

61 An Act to Further Amend the New Executive Law , Title 12 of the Liberian Code of Laws Revised, as Amended, by Adding thereto a New Chapter 50A (Liberia Institute of Statistics and Geo-Information Services)

62 Section 50A. 8 Functions and Responsibilities, subsection 10, 11and 12

63 Sections 50A.21, 50A 26 a,b,c)

(p) Labour

The Civil service Agency ⁽⁶⁴⁾ is an organ of the government of Liberia that deals with the recruitment and or hiring of government workers, except those elected and or appointed. It provides in its Act indirect public access to information by reporting to the Legislature.

Public access to information is guaranteed under the Duties of the Director General, providing that the Director-General shall submit to the President for transmission to the regular session of the Legislature, an annual report in writing giving an account of all moneys received and disbursed by him and the agency, describing the work done by the agency during the preceding year, and make any recommendations deemed necessary for the more effectual accomplishment of the purposes of the agency ⁽⁶⁵⁾.

(q) Maritime

The Liberian Shipping Corporation is an agency of the government of Liberia responsible for among other things; develop the shipping industry in Liberia. It contains a limited clause for access to information, by providing information to the Legislature. This limited access to information provision is found in Section 1031⁽⁶⁶⁾. Reporting— at the close of each fiscal year the corporation shall make to the legislature of the Republic of Liberia a report which shall contain financial statements for the fiscal year, including a balance sheet, a statement of income and expenses and an analysis of accumulated net income. Such statements shall be prepared from the financial records of the corporation which shall be audited by a reputable firm of auditors in accordance with generally accepted accounting principles applicable to commercial corporate transactions.

(r) Education

A key access to information provision under Liberia's educational system is the right of students to challenge the results of their examination. In this instance they have the right to call for and be shown their results to ascertain their mark, especially in instances where they have been informed they failed.

For indirect access to information to be possible for the citizens, parliament should have that information transmitted to an agency that is accessible to the citizens. Where that is not the instance as demonstrated by the Labour & Maritime Laws where information is only given to the parliament for internal administrative purpose, there is no form of access to information.

64 An Act Repealing the Public Employment Law and Amending the Executive Law to create a Civil Service Agency Approved July 19, 1973

65 Duties of the Director-General

66 An Act to Amend the Executive Law to Create the Liberia Shipping Corporation

Chapter Five

5.0 Criminal Code and the Place of Access to Information

The New Penal code is the country's key criminal law, defining the scope of various offenses and outlining the punishments thereof.⁽⁶⁷⁾

Several of its provisions as outlined infra, tend to restrict access to information. There are others however that supports access, though not to a greater extent.

a. Espionage

The first provision one is confronted with is the law of espionage. The intent of espionage is to restrict information dissemination regarding Liberia's defence or military capability in times of war with another country⁽⁶⁸⁾.

The statute defines national defense information as (i) the military capability of Liberia or of a nation at war with a nation with which Liberia is at war (ii) military or defense planning or operations (iii) military communications, intelligence, research or development (iv) military or diplomatic codes (v) Any other information which is likely to be diplomatically or militarily useful to the enemy.

(b) Foreign Power includes any foreign faction, party, military or naval force, whether or not the government thereof is recognized by Liberia, and any international organization.

In 1999, the government of Former President Charles Taylor charged five journalists of the local, daily the News under this provision of the penal law. The paper published that despite the failure of the government to settle almost 12 month wages of civil servants the government had spent US\$250,000.00 to repair a helicopter. The state contended that by the publication of this information, while the government was at war with the rebel Liberians United for Reconciliation and Democracy LURD in the North of the country, the paper had revealed 'national defence information.' The journalists were held in detention for more than two weeks at the Monrovia Central Prison without bail. The case did not get to reach the courts for an opinion on what constitutes espionage under the circumstances.

67 The New Penal Law: TITLE 26, Approved July 19, 1976 and Published April 3, 1978

68 11.8 Espionage

1. *Offense. A person has committed espionage, a first degree felony, if he purposely reveals national defense information to a foreign power with the purpose of injuring Liberia or of benefiting a foreign power in the event of military or diplomatic confrontation with Liberia*
2. *Attempted espionage. Without limiting the applicability of the law of criminal attempt, any of the following acts is sufficient to constitute a substantial step toward commission of espionage there under: obtaining, collecting, eliciting, or publishing information directly related to the military establishment or entering a restricted area to obtain such information.*

Criminal Code and the Place of Access to Information

In the framers intent to strengthen the restriction of national defence information, the code makes it a third degree felony for reckless handling of said information that may lead to disclosure⁽⁶⁹⁾.

This provision of the penal Law intends to restrict access to national security information and therefore blocks access. The provision runs counter to Chapter 9, section 9.4 of the proposed Freedom of Information Act: Protection of Recipients of unauthorized information. It provides that, no civil or criminal proceedings shall lie against any person receiving information or further disclosing it⁽⁷⁰⁾.

While several provisions of the constitution provide opportunity to scrutinize the activities of the President, Criminal Libel against the President places a caveat in the way of exercising this right. It warned against injuring the reputation of the President⁽⁷¹⁾. So far no one has been charged under this law. But it remains on the books and could be visited anytime.

b. Sediton

The law of sediton in the penal code of Liberia is another law that represents an undercutting mechanism for public disclosure. It provides that one who advocates or writes any document to a foreign government on a matter of internal inquiry is guilty

69 11.9 Mishandling sensitive information

A person has committed a third degree felony if, in reckless disregard of the potential injury to the national security of Liberia he,

(a) *Knowingly reveals national defense information to anyone not authorized to receive it.*

(b) *Violates a known duty to which he is subjected as public servant as to the custody, care or disposition of national defense information or as to reporting an unlawful removal, loss, delivery, destruction or compromise the security of such information*

(c) *Knowingly having possession of a document or thing containing national defense information, fails to deliver it on demand to a public servant of Liberia entitled to receive it.*

70 *The proposed Freedom of Information Act submitted to the Legislature in 2008 and pending approval is the effort of the Liberian Media and the Partnership for Media and Conflict Prevention in West Africa.*

71 11.11 Criminal Libel against the President

1. Offense. A person has committed a first degree misdemeanour if he exposes to the public any writing, makes any public broadcast, in which he accused the incumbent President of the Republic of Liberia of conduct which constitutes the commission of a crime, provided that at the time of such publication:

(a) *The conduct charged is untrue and the actor knows it to be untrue; and*

(b) *The purpose of the actor is to thereby injure the President in his reputation*

Criminal Code and the Place of Access to Information

of sedition. The law further protects the president from accusations that may border on his failure to uphold his oath of office⁽⁷²⁾.

c. Criminal Malevolence

Criminal Malevolence⁽⁷³⁾ has been widely used by public officials to shield themselves from critical views and publications that tend to bring to light questionable transactions of state officials. In many instances, they used this law to hamper further publication of a particular story on the basis that once a case in court, further reporting the story would prejudice the court case.

d. Tempering with Public Records

Section 12.34 of The New Panel law of Liberia also contains a provision supportive of record keeping and makes it a first degree misdemeanour for tempering with official records.

Even though it prohibits the destruction of public records, it does not expressly grant access to members of the public to those records⁽⁷⁴⁾.

This provision of the Penal Law supports section 4.7 of Chapter 4 Destruction or Falsification of Records of the proposed Freedom of Information Act.: It shall be a criminal offence punishable on conviction with a maximum of two years imprisonment

72 11.12 Sedition.

1. *Offense. A person owing allegiance to Liberia has committed sedition, a felony of the second degree, if*
(a) *He advocates by word of mouth, writing or otherwise, sectionalism, countyism, tribalism, parochialism or the like, with the intent so doing to incite the people to hostility, create disunity among the people and divide the nation; or*

(b) *He advocates rebellion, incites or in any way promotes insurrection against the authority of the Republic of Liberia.*

(c) *He writes or inspires the writing of any document to a foreign government or concern or any official thereof, making representation on any matter or matters properly the subject of internal inquiry and adjustment; or*

(d) *He accuses the incumbent President of the Republic of Liberia conduct which constitutes a violation of his oath of office, provided that at the time of such accusation: (1) The conduct charged is untrue and the purpose of the actor is to thereby injure the President in his reputation and create contempt for the Presidency.*

2. *Grading. Any person convicted of sedition may be sentenced to imprisonment or death.*

73 11.14 Criminal Malevolence

1. *Offense. A person has committed a first degree misdemeanour if he accuses any executive authority, judicial authority, member of the legislature or any other public authority either by word of mouth, writing or by public broadcast, of conduct which constitutes the commission of a crime, that at the time of the accusation:*

(a) *the conduct charged is untrue and the*

(b) *the purpose of the actor is to thereby injure the official in his reputation and undermine his official status.*

74 Section 12.34 Offenses. *A person has committed a first degree misdemeanour if he:*

(a) *Knowingly makes a false entry in or false alteration of a government record or*

(b) *Knowingly or without lawful authority destroys, conceals, removes or otherwise impairs the verity or availability of a government record.*

for any person, being in the employment or service of any public authority or private body to which this Act applies, who attempts or knowingly or willingly or wilfully destroy, alter or otherwise tamper with any document, record or other information kept in his or her custody or in the custody of any public authority or private body as the case may be before they are released to any person or entity requesting for it.

e. Other Threats

Section 12.54.2 of the penal law departs from all other provisions of the code that make truth a defence in general libel cases⁽⁷⁵⁾.

Unlawful disclosure of confidential information

This provision places restriction of public service employees from disclosing information that come to their knowledge in their official capacity. So while access to information right requires public officials to disclose information, the provision asserts otherwise.

f. Other Breach of privacy of Messages

This section of the penal law makes it illegal to receive and make public information obtained without the consent of the sender⁽⁷⁶⁾. It does not make any distinction as to public interest issues whose disclosure may outweigh the contention of privacy.

In mid 2008, the internet publication, Front Page Africa intercepted a chain of revealing e-mails under the name of Former State Minister Willie Knuckles in which high profile individuals are said to have exchanged e-mails discussing the payment of up to a million dollar by the company hired to manage Liberia's Maritime funds as kick back in maintaining the contract. The online paper published the e-mails forcing the state to set up an investigation panel to probe the reported scandal.

As much as Front page may have received the information without authorization, it published the document on the basis of the public interest. In keeping with this

75 Section 12. 54.2. *A person has committed a third degree felony if, with the purpose of influencing another's official action as a public servant, he threatens:*

(b) To accuse anyone of a crime; or

(c) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person, living or dead to hatred, contempt or ridicule, or impair another's credit or business reputation

76 Section 19.1. 2. *A person commits first degree misdemeanour if, except authorized by law, he:*

(a) Intercepts without the consent of the sender and received a message by telephone, telegraph, letter or other means of communicating privately, but this paragraph does not extend to overhearing of messages through a regularly installed instrument on a telephone Party line or on an extension, or interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or to other normal operation and use; or

(b) Divulges without the consent of the sender and received the existence and or contents of such message if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

provision, such publication is illegal and the publishers are guilty of 'breach of privacy of messages.'

g. Disseminating Obscene Material

Disseminating obscene material remains a first degree misdemeanour. Its key intent is to protect underage children from being corrupted⁽⁷⁷⁾. But in the same vein it restricts the disclosure of pertinent societal ills and succeeding state authorities have used it to crack down on the media.

In 2007, the local daily, The Independent was charged under this provision of the Penal Law after it published the photo of the then Minister of State for Presidential Affairs, Willie Knuckles having sex with two unidentified women. The paper's offices were initially closed by police and the paper shut down. It was reopened after it launched a challenge in the country's Supreme Court. However the main state charges of disseminating obscene material did not reach a verdict.

Two key words in the interpretation of the provision: that the material disseminated must have had as its exclusive theme an appeal to prurient interest in sex... and that it must have not had any social value. The Independent publication is not exclusively aimed at appealing to prurient interest in sex. The publication shows that a government minister had first violated the very provision of this penal law by engaging in deviant sexual activity aside his status requiring that he be brought under the spotlight.

Conclusion

Liberia's legal system, beginning with the country's 1986 constitution solidly guarantees access to information. This right was first granted by the 1847 Constitution of Liberia. The subsequent constitution re-enforced access to information and freedom of the press in a broader sense. But the statute laws, however, have attempted over the years to restrict these constitutional guarantees. In many instances, providing access to information has been criminalized. The Supreme Court, apart from the first case on this subject matter in 1861, has gone at length over the years, particularly in cases affecting functionaries of government or critics of government, to give more support, in its interpretation of the Constitution, to the limitation of freedom of expression and implicitly, access to information.

⁷⁷ Section 18. 7 *A person has committed a first degree misdemeanour if he disseminates obscene material, or such person produces, transports or sends obscene material with the purpose that it be disseminated, unless the dissemination is carried on in such a manner as to minimize risk of exposure to children under sixteen years of age and to persons who had no effective opportunity to choose not to be so exposed. 'Disseminate' means sell, lease, advertise, broadcast, exhibit, or distribute. Material is obscene if taken as a whole, it:*

- (a) Has as its exclusive theme an appeal to prurient interest in sex of an average person or , in the case of material designed for or disseminated to special groups to the prurient interest in sex of the members of that group; and*
- (b) Is utterly without social value to the persons to whom the dissemination is addressed. Advertising and manner of distribution may be considered, where relevant, in determining the social value of the material.*



*Media
Rights
Agenda*

Media Rights Agenda (MRA) is an independent, non-governmental organisation established in August 1993 for the purpose of promoting and protecting press freedom and freedom of expression in Nigeria. MRA is registered in Nigeria, has Observer Status with the African Commission on Human and Peoples' Rights in Banjul, The Gambia.

MRA's programmes fall into four broad categories, namely: Litigation, Training, Research and Publications, and Advocacy, although its projects in these areas often overlapped. Its specific project activities include monitoring of attacks on the press, publication of reports on media issues, legislative lobbying, organizing seminars, conferences and workshops, research and litigation, particularly class actions and legal assistance to journalists who are physically attacked, arrested or detained, unjustly dismissed from their work or are harassed in other manners.

The Aims and Objectives of Media Rights Agenda are:

- a. to promote respect and recognition for press freedom and freedom of expression in Nigeria;
- b. to provide protection and support for journalists and writers engaged in the lawful pursuit of their professional duties;
- c. to promote the highest standards of professional ethics, integrity, training and conduct in the journalism profession; and
- d. to bring about a conducive social and legal atmosphere for the practice of journalism, and ensure the protection of the journalist's right not to be compelled to work against his or her conviction or disclose confidential sources of information.

Media Rights Agenda has an administrative structure made up of Trustees, the Executive Committee, Advisory Council and the Secretariat.

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