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# Freedom of Expression: A Driver for All Human Rights for Ghana's Development

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## INTRODUCTION

Human rights are basic rights given to mankind by nature and therefore must be preserved and protected. The various human rights such as right to life, freedom of expression, inviolability of human being, freedom of assembly, freedom of association, the right to fair trial of persons charged with criminal offences, women and children's right are all important and one cannot say one that one is more important than the other. Freedom of expression on the other hand seems to be the driver for all human rights and must be promoted in every state. Where people have the right of freedom of expression, the people may discuss all the fundamental human rights and how they could be improved upon to make life enjoyable for human beings. Where people are being subjected to slavery, degrading or inhuman treatment or where their rights are violated and there is freedom of expression those abuses may be exposed to the public and the global world at large. This presentation seeks to discuss how freedom of expression could be used to drive all human rights to promote peace and tranquility within the Ghanaian context.

The Constitution of Ghana is the supreme law of the land.<sup>1</sup> It provides for the Protection of Human Rights and Fundamental Freedoms. The Constitution and its provisions on fundamental human rights and freedoms are the most important forms of expression of the commitment of the sovereign people of Ghana to the values of democracy, rule of law, freedom, unity and stability, peace and justice, probity and accountability.<sup>2</sup>

Freedom of expression is a fundamental human right that plays a vital role in promoting all other human rights and drives the development of a country. It allows individuals to express their opinions, advocate for their rights, and hold their governments accountable for their actions. Without freedom of expression, individuals would not be able to raise concerns about issues such as corruption, discrimination, or human rights abuses. This could lead to a deterioration of human rights and hinder the progress of the development of the country.

<sup>1</sup> Article 1 of the Constitution of Ghana 1992

<sup>2</sup> Chapter 5 of the Constitution of Ghana 1992

Everyone has the right to express themselves freely within the law provided by the country concerned.<sup>3</sup> This freedom must include the ability to express ideas freely across local, regional and national boundaries, without any intervention from the government, and to hold opinions. The licensing of broadcasting, television, or movie theatre businesses should however not be prohibited. Since exercising these freedoms entails duties and responsibilities, exercising them may be subject to the formalities, conditions, restrictions, or penalties required by law in a democratic society, to protect national security, territorial integrity, or public safety, to prevent disorder or crime, to protect one's health or morals, to protect one's reputation or other people's rights, to prevent the disintegration of the state, or for other reasons.

## GENERAL FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Fundamental human rights and freedoms are inalienable rights conferred on human beings by nature and must be jealously guarded to promote the dignity of man. These human rights and freedoms includes: the protection of right to life except where the life of a person is taken in accordance with law; the protection of personal liberty unless such liberty is deprived in accordance with procedure which is permissible by law; respect for human dignity; human beings are to be treated equally and protected from slavery and servitude or forced labour; equality before the law aims at preventing discrimination; protection of privacy of home and properties of persons unless the protection is waived in accordance with law; promotion of fair trial for persons charged with criminal offences; and general fundamental human rights such as the right to freedom of speech and expression, freedom of thought and conscience, freedom to practice one's religion of choice, freedom of assembly, freedom of association, freedom of movement,<sup>4</sup> right to information subject to laws that are necessary in a democratic society .

The other fundamental human rights expressly provided by the Constitution of Ghana, 1992 include property rights of spouses; administrative justice; economic rights; educational rights; cultural rights; women's rights; children's rights; rights of the physically challenged; and the rights of the sick. All the different fundamental human rights come together to form one fundamental human right and each one influences the other. The fundamental human rights are made up of one body with different parts and can be likened to what Saint Paul said to the Corinthians in the Bible.<sup>5</sup> It provides as follows:

Just as a body, though one, has many parts, but all its many parts form one body, so it is with Christ. For we were all baptized by one Spirit so as to form one body—whether Jews or Gentiles, slave or free—and we were all given the one Spirit to drink. Even so the body is not made up of one part but of many. Now if the foot should say, “Because I am not a hand, I do not belong to the body,” it would not for that reason stop being part

<sup>3</sup> Article 10(2) of the African Charter on Human and Peoples' Right and Article 21 of the Constitution of Ghana 1992

<sup>4</sup> Chapter 5 of the Constitution of Ghana 1992.

<sup>5</sup> New International Version Bible 1st Corinthians Chapter 12 verse 12-26



of the body. And if the ear should say, "Because I am not an eye, I do not belong to the body," it would not for that reason stop being part of the body. If the whole body were an eye, where would the sense of hearing be? If the whole body were an ear, where would the sense of smell be? But in fact, God has placed the parts in the body, every one of them, just as he wanted them to be. If they were all one part, where would the body be? As it is, there are many parts, but one body. The eye cannot say to the hand, "I don't need you!" And the head cannot say to the feet, "I don't need you!" On the contrary, those parts of the body that seem to be weaker are indispensable, and the parts that we think are less honorable we treat with special honor. And the parts that are unpresentable are treated with special modesty, while our presentable parts need no special treatment. But God has put the body together, giving greater honor to the parts that lacked it, so that there should be no division in the body, but that its parts should have equal concern for each other. If one part suffers, every part suffers with it; if one part is honored, every part rejoices with it'.

The fact that all the various human rights come together to form one body does not seem to suggest that they are of equal status as admittedly some of them are more relevant. All the human parts are equally important but I can say that the stomach drives all the other parts of the body and it is more important than an arm or a leg. A person cannot survive without a stomach but a person can survive without a leg or arm and I can emphatically state that the stomach is one of the main drivers of all the human parts. In the same breath, freedom of expression could be likened to stomach as the driver for human rights for Ghana's development.

## FREEDOM OF EXPRESSION AND INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

During the Second World War, the ordinary and marginalized people were subjected to inhuman and barbaric treatment. There was a total shut down of information. As a result of this barbaric and inhuman treatment meted out to the marginalized and downtrodden in society, the powerful nations at that time saw the need to promote freedom of expression to enable the individuals to gather, transmit and publish information without fetters to expose barbaric acts committed by some of the powerful nations. To achieve the above objective, the United Nations (UN) passed The Resolution 59 of 1946 which became known as 'Freedom of Information (FOI)', to promote freedom of expression by clothing the individuals with authority to gather, transmit and disseminate the information gathered without any limitations.

Subsequently, some international instruments were enacted to promote fundamental human rights that were seriously abused during the First and Second World Wars. The main objective of these instruments was to restore the dignity of man. The human rights instruments that were made after the Second World War are: the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), the American Convention on Human Rights (ACHR) and the African Charter on Human and Peoples' Rights (ACHPR).

The Universal Declaration of Human Rights which was enacted in 1948 immediately after the Second World War where human beings had lost their dignity as a result of atrocities and barbaric acts committed by their fellow human beings, was to recognise all the inalienable rights of human beings, to promote freedom, justice and peace in the world and , furthermore , to ensure that the ordinary person enjoyed freedom of expression , belief and freedom from fear and wants which had been the highest aspiration for human beings to drive all the other human rights.

Admittedly, the Universal Declaration of Human Rights was proclaimed as a soft law without a binding effect but was to be recognised and observed by the peoples of the Member States and the territories under their jurisdiction. However, with the passage of time, it has become an international customary law with binding effect and are quoted in all the human rights instruments mentioned above in their respective preambles.<sup>6</sup>

Article 19 of the Universal Declaration of Human Rights which is on freedom of expression provides thus;

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The above provision places emphasis on freedom of expression as a tool to drive the other human rights provisions. In dictatorial regimes, leaders suppress freedom of expression to enable them pursue their policies and agenda which ordinarily could not have thrived where people were permitted to express themselves freely. In a democratic society where freedom of expression is suppressed, the other fundamental human rights are abused as there are no avenues to expose those abuses to the public. Whenever freedom of expression is threatened, all other human rights are suppressed and that accounts for the reason for the criminalisation of freedom of speech in some jurisdictions.

The ICCPR which Ghana is a signatory has an elaborate provision on freedom of expression.<sup>7</sup> It provides thus:

1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are; necessary: (a) For respect of the rights or reputation of others; (b) For the

<sup>6</sup> Article 60 of the African Charter on Human and Peoples' Right mandates the African Commission on Human and Peoples' Right which is known as the Banjul Commission. It enjoins the Commission to draw inspiration from international law on Human Rights including the Universal Declaration of Human Rights, The Charter of the African Union and Human Rights instruments adopted by the United Nations, and by the African Countries.

<sup>7</sup> Article 19 of the International Covenant on Civil and Political Rights (ICCPR)

protection of national security or of public order (order public), or of public health or morals.

The ICCPR provides for legitimate restrictions on freedom of expression and the limitations are in respect of those that would thrive in a democratic state including the laws that will respect the reputation of others, and protect national security, public order, public health or morals. The ICCPR makes freedom of expression pivotal to the sustainability of the other human rights but it is not absolute, however, the parameters of the limitations have been provided. In effect, where a law is made to curtail freedom of expression, it must be within the limitations provided by the Covenant. Freedom of expression like the other human rights are not absolute and carries with it certain duties and responsibilities including the protection of public order, prevention of disclosure of information sought and obtained in confidence, and maintenance of the authority of the courts to maintain peace and order, and finally for the protection of the reputation of others.

Article 9 of the African Charter which is on freedom of expression has been oversimplified and will require a similar instrument such as the ECHR to provide for the limitations it intended to impose.<sup>8</sup> The Charter provide as follows:

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

The limitation to be imposed on freedom of expression is to be within the law but the parameters of the law are not provided and there is the need to resort to similar international instruments which have provided for the parameters of the restrictions. The African Charter on Humans and peoples' right does not prescribe for rights without duties therefore every human right is subject to duties except all forms of exploitation and degradation of man including torture, inhuman, cruel or degrading punishment.<sup>9</sup>

The two international instruments that can be resorted to are the ECHR and ACHR as the limitations to be imposed on freedom of expression have been well articulated and human right commission and courts including regional courts take inspiration from other human rights instruments to persuade them.

The ECHR which is the human rights instrument for the Europeans has a detailed provision for freedom of expression and being a human rights provision, which is inherent in a democracy and intended to secure the freedom of dignity of man, it may be admitted first and foremost as a comparative law, and, furthermore, under article 33 (5) of the Constitution of Ghana, 1992. The ECHR provides as follows:<sup>10</sup>

1. Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of

<sup>8</sup> Article 9 of the African Charter on Human and Peoples' Rights

<sup>9</sup> Part I Chapter (II) of the African Charter on Human and Peoples' Rights

<sup>10</sup> Article 10 of the European Convention on Human Rights

broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary’.

The limitations that are placed on freedom of expression are laws that are necessary in a democratic society in the interests of national security, territorial integrity, public safety, public health and morality, protection of reputation or rights of others, prevention of disclosure of information received in confidence, and any law that will maintain the authority and impartiality of the courts. Apart from the areas where freedom of expression is curtailed for diverse reasons, every citizen of Ghana, and particularly, journalists have an obligation to express opinion on any matter that would help develop the country.

### JUSTIFICATION FOR LIMITATIONS ON FREEDOM OF EXPRESSION

One of the main aims of placing restrictions on freedom of expression is to safeguard the territorial integrity, public safety and national security and therefore any expression that seeks to propagate the idea of war or advocate for national, racial, tribal or religious hatred are forbidden as they create anarchy and lawlessness and may affect national development.

The other valid grounds upon which limitations on freedom of expression may be imposed are matters of public safety, prevention of disorder or crime, and the protection of health and morals. Some examples of limitations placed on freedom of expression in the name of public health and morals are, the criminalisation of pornographic images of a child, sexual extortion, and the use of computer for storing electronic data or transmission relating to a child for sex.<sup>11</sup>

The American Convention on Human Rights (ACHR) provides that any propaganda of war and any advocacy of national, racial and religious hatred that constitutes incitements to lawlessness shall not be permitted as they are considered to be offences under law.<sup>12</sup>

Freedom of expression is meant to expose wrongs and not meant to defame people. Therefore, any expression of opinion about a person that is false and fails to respect the rights or reputation of others is a civil wrong and action for defamation against such a person may succeed and the publisher cannot hide under freedom of expression.

The main concern here is that defamation should not be criminalised and should remain a civil wrong as appropriate remedies would be granted by the court and the involvement of the State to seek for imprisonment is an attempt to

<sup>11</sup> Sections 62-64 of the Cybersecurity Act, 2020 (Act 1038).

<sup>12</sup> Article 13 of the American Convention on Human Rights (ACHR)

curtail freedom of expression and should be avoided unless it will be inimical to national security, public safety and protection of health and morals.

The repeal of the criminal libel laws in Ghana by the Criminal Code (Repeal of Criminal Libel and Seditious Laws) (Amendment) Act, 2001 (Act 602) including negligent and intentional libel was an improvement in the freedom of expression space to leave defamation to be determined by the courts instead of using imprisonment as threats to freedom of expression.

The Media Foundation for West Africa (MFWA) expressed concerns about the culture of press freedom in Ghana 21 years after the repeal of criminal libel law in Ghana:<sup>13</sup>

Ghana's press culture flourished and the country became a yardstick by which democracy and press freedom was measured in much of Africa. But 21 years down the line, journalists are being arrested and thrown into jail for doing their job, the very things that the libel and seditious laws were repealed to prevent. It is déjà vu turned upside down on its head. What happened? How did Ghana go from being the heartland of press freedom in Africa to becoming an iron republic for its own journalists? Ghana is a democratic country and in democracies, things like the arrest of journalists who criticize government must not be permitted by law. Section 208 of the CRIMINAL AND OFFENCES ACT 1960, (ACT 29) and section 76 of the Electronic Communications Act (Act 775) are the two ugly sisters of the criminal libel law who never left with her. These two laws provide the justification to arrest journalists and critical voices for criminal prosecution.

Section 208 of the Criminal and Offences Act 1960, (ACT 29) states :

(1) A person who publishes or reproduces a statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace knowing or having reason to believe that the statement, rumour or report is false is guilty of a misdemeanour.

Also, section 76 of the Electronic Communications Act (Act 775) states that:

(1) A person who by means of electronic communications service, knowingly sends a communication which is false or misleading and likely to prejudice the efficiency of life-saving service or to endanger the safety of any person, ship, aircraft, vessel or vehicle commits an offence and is liable on summary conviction to a fine of not more than three thousand penalty units or to a term of imprisonment of not more than five years or both.'

The author seems to hold a different opinion taken by the Media Foundation for West Africa who are demanding for the repeal of both provisions by the fact that the restrictions imposed are to ensure that the security of the nation which is more important to individual interest is preserved. The offences complained above by the Media Foundation for West Africa becomes an offence where the person disclosing the information knew that the content of the information was false or that he did not have reason to believe that the statement was false or

<sup>13</sup> Media Foundation for West Africa (MFWA) by a publication dated September 19, 2022



misleading and intended to create anarchy in the country and such conduct cannot be addressed by civil remedy either in the form of compensation or damages. Civil remedies cannot be used to address a publication intended to affect national security or public morals. Similarly, Section 76 of the Electronic Communication Act (Act 775) which is on a person who uses misleading information to endanger the safety of a person, ship or any other means of transport cannot be protected by civil remedy such as defamation or libel. The limitation placed on the above two offences is to protect the security of the nation and should not be repealed. It must be noted that one of the limitations placed on freedom of expression is to protect public health and morality which are the foundation of national stability. Quite often, some people argue that the Universal Declaration of Human Rights did not provide for any exceptions on freedom of expression and why should the other treaties and agreements on human rights place restrictions on freedom of expression?

The circumstances under which the Declaration was made was to restrict hate speech and any expression that would injuriously affect national security, public order, public health or morals and not to repeat the incidence which gave birth to the First and Second World Wars and the subsequent treaties clarified the position to disclose that freedom of expression which is the touchstone of national development is not an absolute right.

The preamble to the Declaration unambiguously provides that it was enacted to recognize the inherent dignity and inalienable rights of the human race to promote freedom, justice and peace in the world and therefore by necessary implication frowns on any act that would jeopardize freedom, justice and peace in the world.<sup>14</sup>

The restrictions on freedom of expression are meant to promote freedom, justice and peace and journalists must acknowledge the fact that they work to promote freedom, justice and peace and will not undertake any activity that would destabilize the country.

The legitimate test established to restrict freedom of expression by the States with the aim of controlling the powers of States is known as the 'Three Part Test'. The first test is to ascertain the legitimacy of the restrictions imposed by the State on freedom of expression. The second test is to ascertain if the restrictions were imposed to pursue a legitimate aim, and the third test is to ascertain whether it is necessary to impose restrictions on the right to information. Any restrictions on freedom of expression that does not meet all the requirements imposed by the Three-Part Test shall not be considered as a legitimate restriction and may be challenged in an appropriate forum for violating her international obligations.

Another fetter that is placed on freedom of expression is to maintain the authority and impartiality of the judiciary. The preservation of the authority of the courts is to ensure that the citizenry respect the authority of the court to maintain peace and order in the country. The maintenance of the impartiality of the courts brings to the fore the issue of contempt. Civil contempt basically deals with willful disobedience to an order of the court. Criminal contempt which restricts freedom of expression is meant to maintain the authority and impartiality of the court and any violation of any of the following constitutes contempt of court.

<sup>14</sup> The Preamble to the Universal Declaration of Human Rights

A criminal contempt may be committed in the face of the court ( *in facie curiae*) or outside the face of the court ( *ex facie curiae*).<sup>15</sup> A criminal contempt must constitute anyone of the following; an act that scandalises the court or tends to scandalise the court; an act that impedes or prejudices pending proceedings; insulting the court or a judge in a pending proceedings; an act that seeks to undermine or lower the authority of the courts; an act that prejudices or tends to prejudice or interferes or tends to interfere with pending proceedings; or an act that interferes or tends to interfere with or obstructs the administration of justice in whatever manner.

One other restriction imposed on freedom of expression that most people are not in agreement with but permeates through all the human rights instruments is the power of contempt of court but those people fail to appreciate that without a respectable judiciary which is impartial to maintain peace and order, peace and freedom cannot be sustained to promote development which any country seeks to achieve.

The power of the Superior Courts to commit for contempt to themselves to maintain the impartiality of the judiciary which is inherent in common law has been re-enacted in articles 19(12) and 126 (2) of the Constitution of Ghana, 1992.<sup>16</sup>

Article 19(2) of the Constitution reiterates the position that the Superior Court shall have the power to commit to themselves and punish persons for contempt despite the fact that the act or omission constituting contempt is not defined in a written law and the penalty not prescribed. The distinction between criminal law and contempt is clear as contempt is a wrong committed against the court to undermine its impartiality while a criminal offence is an act which has been criminalised by law and the penalty is prescribed in a written law.

## THE USE OF FREEDOM OF EXPRESSION TO DRIVE ALL HUMAN RIGHTS

It is stated in the introductory part of this paper that human rights are many including right to life; right to liberty and security; protection from slavery and forced labour; right to a fair trial; right to respect for private and family life; freedom of thought, conscience and religion; freedom of assembly and association; right to an effective remedy; derogation in time of emergency in accordance with obligations under international law; economic rights; educational rights; cultural rights and practices; women's rights; children's rights; rights of the disabled and the rights of the sick, and almost all of them are driven by freedom of expression to remind people of those rights and further expose the persons who are violating those rights of the people and in particular, the violations of the rights of the common people.

<sup>15</sup> *Republic v Numapau; Ex parte Ameyaw II* [1998] SCGLR 639 and *Ackah v Adjei-Acheampong and another* [2005-2006] SCGLR 1 at page 13 the Supreme Court clearly stated that there are two types of contempt; criminal and civil and are inherent in common law and buttressed upon by the Constitution of Ghana 1992.

<sup>16</sup> *Ackah v Adjei-Acheampong and another* [2005-2006] SCGLR 1 the Supreme Court at pages 12 and 13 of the record stated that the Superior Court have the power to commit for contempt to themselves and they are inherent in the court and was further conferred on them by Articles 126 (2) of the Constitution of Ghana, 1992

In a country where people's rights are violated, the entire country will be stricken with fear and would require journalists and bold persons to expose those abuses and enlighten the citizenry of their fundamental human rights which have been suppressed. The sick, disabled, workers, women and children have their specific human rights available to them and it would require persons including journalists to impart the information to the said persons who are entitled to those rights and do not know of their existence or have those rights violated.

The country requires bold and honest persons to disseminate information on all the fundamental human rights and in particular the general fundamental human rights such as freedom of expression to receive and impart information on television, radio and any electronic means of communication without frontiers; educate the people on their rights to freedom of assembly and association, freedom to practise any religion and to manifest such practice and expose pastors and priests who are abusing the fundamental human rights of their congregations to seek redress against them; freedom of assembly including the right to take part in processions and demonstrations; freedom of association; and freedom of movement.

## RELATIONSHIP BETWEEN HUMAN RIGHTS AND DEVELOPMENT

The United Nations Secretary- General in 2005 had this to say about the direct relationship between human rights and development.<sup>17</sup> He stated thus:

We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights.'

The above quotation shows the relationship between security and development. There is no gainsaying that freedom of expression drives human rights and there is a linkage between freedom of expression and all other human rights and therefore, criminalisation of freedom of expression should be fiercely resisted.

There is a direct relationship between human rights and development by the fact that human beings are at the centre of development and where human rights are not observed, it would negatively affect development and the converse is the case where human rights are protected and preserved. Where persons enjoy freedom of speech in an environment where there is no fear of intimidation, arrest and prosecution, human beings who are the centre for development increase productivity. In a country where right to life is not protected, there is no freedom of expression to expose abuses, the people work under fear which negatively impact on development.

The Right to Information Act, 2019 ( Act 989) deals with the mode for which information may be obtained from a public institution or a private institution which performs public function or receive public resources and it is aimed at making public institutions accountable. However, it is not every information that is made accessible. There are restrictions imposed on right to information similar

<sup>17</sup> In Larger Freedom : Towards Development, Security And Human Rights For All : Report Of The Secretary-General, 21 March 2005, A/59/2005

to that of freedom of expression, otherwise where there are no restrictions on right to information and an information which is restricted by law is obtained, that information may be published or expressed to defeat the purpose of the restrictions imposed on freedom of expression.

Every individual is entitled to the fundamental human rights and freedoms contained in Chapter Five of the Constitution subject to the rights and freedoms of others and for public interest. The preservation and protection of the individual's human rights to promote the dignity of man is the highest attainment of human development. The over all development of Ghana will be incomplete without the protection of the fundamental human rights and freedoms of the individuals who are at the centre of development.

Article 41 of the Constitution provides for the duties and obligations of the individual and if the individual whose rights and freedoms are safeguarded by the Constitution performs those duties and obligations imposed on them without fear of arrest or intimidation in strict compliance with the Constitution, Ghana would establish a just and free society within a reasonable time. The Directive Principles of State Policy require every individual to participate and enjoy political, economic, social and cultural developments of the country and the goals shall be achieved after the fundamental human rights and freedoms of the individuals have been fully realized.

The individuals can fully discharge their obligations under article 41 of the Constitution after their fundamental human rights have been fully realized and can be at the centre of development to turn things around. The freedom of expression to drive all the other human rights to achieve the total development of the country requires the concerted efforts of Ghanaians to discharge the constitutional obligations imposed on them under article 41 of the Constitution.

The provision enjoins the individuals to, inter alia, promote the good name and prestige of Ghana; uphold the Constitution and the law; promote national unity and live harmoniously with others, to respect the rights and freedoms of other; to co-operate with lawful agencies to maintain law and order; to protect and preserve the environment; preserve and protect public property and expose and combat the misuse of public funds and waste; and pay their taxes honestly.

The fundamental human rights are equally important but they require freedom of speech as the engine to drive them to promote a balanced development of the country. freedom of expression is not absolute and requires restrictions but shall be necessary in a democratic society. Therefore, all legitimate restrictions imposed on freedom of expression in accordance with law shall be observed. Furthermore, the individuals who abuse the right of freedom of expression to defame other people, attack matters relating to public order, national security, public health or morals, national cohesion and stability should stop forthwith as the restrictions are legitimate and provided to pursue a just cause for the entire citizenry.

The other restrictions on freedom of expression which have been criminalised and touch and concern rights and reputation of others should be decriminalized and be regulated by civil law. The repeal of the criminal law which was one of the laws that criminalised some of attack on the rights and reputation of persons was made in accordance with law.



Rule of law is fundamental to economic growth and development. Rule of law encompasses the supremacy of the law, equality of the law, protection and preservation of human rights. There is a correlation between rule of law and development. Where there is no rule of law there will be no development particularly, human development. Rule of law ensures that contracts through trade at both local and the international levels are enforceable, peace and security and the political stability of a nation are guarded at all times; to achieve economic and social cohesion and economic development; and to protect rights of persons .

There is a positive correlation between rule of law, good governance and peace and stability of a nation and economic development. Rule of law includes supremacy of law, fundamental human rights and equality before the law which includes protection against discrimination.

### FREEDOM OF EXPRESSION AND DEMOCRATIC GOOD GOVERNANCE

Freedom of expression is crucial to maintaining an effective democracy and upholding human rights and it also plays a crucial role in defending other constitutional rights. There cannot be a free country or a democracy without a comprehensive guarantee of the right to free expression that is upheld by independent and impartial courts. Freedom of expression is a right in itself as well as a constituent of other rights protected under the basic laws of a country or the constitution.

Such expressions of freedom includes the freedom of assembly. At the same time, freedom of expression can conflict with other rights protected by the basic law or the Constitution of a country, such as the right to a fair trial, to respect for private life, to conscience and religion. The conflict may arise when authorities need to protect the interests or values such as national security or public health. When such conflict occurs, the Court strikes a balance in order to establish the pre-eminence of one right over the other. The protection of freedom of expression is essential for the democratic political process and the development of every human being.

Everyone has the right to freedom of expression in a democratic society. This right shall include the freedom to hold opinions and to receive and impart information and ideas. There are three components of the right to freedom of expression: freedom to hold opinions; freedom to receive information and ideas; and freedom to impart information and ideas. These freedoms must be exercised freely, without interference by public authorities and regardless of limits.

Freedom to hold opinions is a prior condition of the other freedoms guaranteed by law, and it enjoys an almost absolute protection. Any restrictions to this right will be inconsistent with the nature and expectations of a democratic society. A nation should not attempt to indoctrinate its population and should not be permitted to make a distinction between those who have different opinions. Additionally, the state's promotion of biased information may represent a significant and intolerable barrier to the right to express one's opinion.

In a democratic society people should not be afraid to share opinions because there should be safeguards against potential undesirable outcomes. In such societies, people should also not be compelled to share opinions on issues.

The ability to freely exchange information and ideas is crucial for a Ghana's political climate and democratic framework. Without this freedom, meaningful free elections are not conceivable. In addition, a fully exercised right to free speech permits unrestricted criticism of the government, which is the key sign of a free and democratic society. The courts enforcement jurisdiction requires it to give the fundamental human rights and freedoms among other characteristics of a "democratic society" the utmost consideration. One of the fundamental tenets of such a society, one of the prerequisites for both its advancement and the growth of every man, is freedom of expression.

A key principle of effective governance is the freedom to criticize the government of the nation. The press has a responsibility to disseminate information and ideas about political matters in the same way that it does about other topics of public interest. The public has a right to hear such facts and ideas, in addition to the press's responsibility to communicate them. It goes without saying that the freedom to share ideas and information complements the freedom to receive them. In terms of both radio and print media, this is accurate. Regarding the latter, the states should not intervene in the way of the transmitter and the receiver because they have the legal right to make direct communication in accordance with their will. The right to seek for information and to obtain it from any legitimate source is a part of the freedom to receive information. International television programmes are also included under the right to informational freedom.

## CONCLUSION

Freedom of expression as a driver of all human rights should not be unreasonably restricted or impeded by criminal sanctions to lose its potency otherwise, all the human rights it drives will come to a halt and shall be inconsequential to rule of law, values of good governance and the over all development of the country which human rights are to be religiously observed to achieve.

As a means to drive other human right for Ghana's development, freedom of expression as a fundamental human right plays a vital role in promoting all other human rights and driving development in Ghana by allowing individuals to express their opinions, advocate for their rights, and hold their governments accountable for their actions. Without freedom of expression, individuals would not be able to raise concerns about issues such as corruption, discrimination, or human rights abuses. This could lead to a deterioration of human rights and hinder the progress of development.

Where individuals are free to express themselves, they can fight for their right to basic needs such as food, shelter, employment, roads, education, healthcare and others. They can also advocate for their civil and political rights, including the right to vote, freedom of assembly, and the right to a fair trial. When these rights are protected, individuals can participate fully in the democratic process, which is a crucial driver of development. However, reckless freedom of expression can be used to spread hate speech and incite violence, the spread of extremist ideologies and recruitment of people to violent groups, disseminate false information and propaganda. Harmful content such as pornography or violent material could be disseminated. It can also lead to the infringement of other people's privacy or intellectual property rights. It can be used to harass or

intimidate individuals, especially women and marginalized groups. Freedom of expression can be used to defame or slander someone by spreading false or misleading information about them, which can damage their reputation and violate their right to privacy and economic values. The right to freedom of expression may conflict with the right to privacy, especially when personal or private information is shared without consent or in a manner that is intrusive.

Freedom of expression promotes transparency and accountability in government. It provides a platform for citizens to give feedback to the government on its policies and services. This feedback can lead to better resource utilization and improved service delivery, ultimately benefiting citizens. It also allows journalists to expose corruption and other illegal activities, which further enhances transparency and accountability in the government. On the other hand, it can be used to undermine national security or other vital interests of the state, to create division, conflict between different groups in society and to spread misinformation and conspiracy theories, leading to confusion and mistrust in society. This can lead to the spread of harmful rumors and speculation, leading to panic and social unrest.

Freedom of expression promotes innovation and creativity. When individuals can express their ideas, they can contribute to the development of new technologies, products, and services. They can fight for their right to intellectual property. This, in turn, can lead to economic growth and the creation of new job opportunities in the country.

Freedom of expression promotes social cohesion and tolerance. When individuals are free to express their opinions and beliefs, it encourages open dialogue and debate. This can help build understanding and respect between people from different backgrounds, fostering social cohesion and tolerance. This, in turn, can promote peace and stability in the country, which is a crucial driver of development.

Overall, while there are valid concerns about the potential misuse of freedom of expression, the benefits of protecting and promoting this right far outweigh the risks. It is essential to balance the protection of individual rights to freedom of expression with the need for public safety and national security, and to create policies that promote responsible and ethical use of this rights. It is also important to balance the right to freedom of expression with the need to protect the rights of others, including their privacy and intellectual property rights. This can be done through the use of laws and regulations that aim to prevent infringement on the rights of citizens while still allowing for a wide range of expression without compromising on the security, health and safety of life and property.

**NB:** This paper is based a presentation delivered By Justice Sir Dennis Dominic Adjei to he Ghana Journalists Association (GJA) on Wednesday, 3rd May, 2023 on the Occasion on World Freedoms Day. The author thanks the Association for the invitation to present his thoughts.



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