



Thusian Institute for Religious Liberty Inc. (TIRL)

P.O. Box 2622, Kingstown,
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19th June, 2016

The Chairman

Select Committee Cybercrime Bill 2016

C/o Clerk of the House of Assembly

Court House Building

STATEMENT OF THE THUSIAN INSTITUTE FOR RELIGIOUS LIBERTY ON
THE ANTI-RELIGIOUS LIBERTY IMPACT
OF CLAUSE 16 OF THE CYBERCRIME BILL 2016

The Thusian Institute for Religious Liberty Inc. (TIRL) registers its displeasure with some draft clauses in the Cybercrime Bill 2016, especially clause 16. While we understand the effort to create cybercrime legislation for our Country, we are concerned that characteristics of section 16 in particular would have a negative impact upon the exercise and enjoyment of the right to Religious Liberty of Christians and other conscientious persons in St. Vincent & the Grenadines (SVG). The Right to Religious Liberty is the fundamentally guaranteed Freedom of Conscience in section 9 of the Constitution of SVG. Moreover, it is the supreme inalienable Right of mankind; endowed to him by the creator God. Protection of this Right entails the freedom, not only to believe, but also to propagate one's belief without interference and as such it encompasses the protection of the freedom of expression of the individual, seen in section 10 of SVG's constitution. Freedom of expression involves the freedom of the press and press means any form of media which the individual may use to share what his conscience dictates. This no doubt includes the medium of the internet, using computer devices of all kinds. Note also that Freedom to propagate one's beliefs is protected whether it be dissemination in private or in public and whether the material be published to one person or to a group of persons.

Clause 16 of the cybercrime Bill is dangerous to the exercise of Religious Liberty because it proposes to widely curtail free speech by creating a criminal offence called "*Harassment utilizing means of electronic*

communication". This is defined in subsection 1 as using "...a computer system to cyberbully, intentionally or recklessly, another person..." And in defining the verb "to cyberbully" the following problematic definition is given in subsection 5: "...*cyberbully means to use a computer system repeatedly or continuously to convey information which causes-*

- a. *Fear, intimidation, humiliation, distress or other harm to another person; or*
- b. *Detriment to another person's health, emotional well-being, self-esteem or reputation"*

This offence is punishable on summary conviction by a fine of one hundred thousand dollars or imprisonment for two years or both or on indictment, by a fine of two hundred thousand dollars or to imprisonment for five years or both. The words which define "cyberbully" are non-specific terms which are subjective; based on the feelings of an individual. What does it mean to convey "fear", "intimidation" and "humiliation"? What do these terms mean? What is the definition of "distress"? What is "other harm"? What does detriment to a "person's health", "emotional well-being", "self-esteem" mean? These are all subjective to the person; all based on feelings.

- i. Let us use an example. What if a preacher publishes a video program in which he or she exposes Sodomy (homosexuality, lesbianism etc.) as an abominable sin in God's sight, showing that God will destroy the sinner in hell fires for it, if they don't repent? A sodomite may claim that such preaching causes him fear, intimidation, humiliation or distress. It may also be seen as destructive to the self-esteem of the sodomite because it directly shows God's condemnation for his behavior and what they call their lifestyle. He may claim it causes him distress to see this video, shared by many other holders of the same belief, on the same platform on social media, for example. He may claim it makes his blood pressure elevate, causing detriment to his health or that it damages his emotional well-being because the preaching shows God's condemnation of his behavior. Now please note that in freedom of expression used to propagate one's beliefs, it does not matter if the preaching is general or names out a particular sodomite who say may be a public figure or even another religious preacher. Freedom to teach one's belief is both the freedom to teach it to one person or to a group of persons.
- ii. Besides, how will you determine that the information conveyed using a computer system was the cause of the distress, for example? By taking the word of the person who claims to be distressed? What if the person is seeking revenge or has a vendetta and falsely accuses another of cyberbullying him, by claiming to be distressed by information the alleged cyberbully conveys via a computer system? How will it be determined that the information conveyed was linked to detriment to the persons' health and or emotional well-being? Remember, words which are conveyed in a moment, reaching a person's mind in a moment, do not keep the words in a person's mind and do not tell the person what kind of psychological response they should form. Furthermore, what if the preacher's message tells the person that the adequate response is to repent, believe the Gospel and be justified or changed, the fact that the person chooses another response-such as depression- is not the preacher's responsibility, because the preacher gave the object/goal of his preaching which is biblical-that is to repent! Moreover, a person may lie about the cause of their distress and then this would make criminals out of innocent persons simply because someone's feelings were hurt or so they may claim. Will the preacher be prosecuted with jail time of 2 to 5 years and or 100,000 to 200,000 EC dollars, or both, because of this? All because of how a person reacts to his online publication?
- iii. How often is "repeatedly" or "continuously"? A thing done twice is repeated. And for the purposes of the internet, a video once published on, say a Facebook page, which remains there for 5 minutes,

- 1 hour, 5 hours, 1 day, may perhaps be deemed as ‘continuous’ for some, especially since it can be shared several times by others, although the original poster may have only posted it once. Who and or what will determine the meaning of these terms? Would it be the arbitrary feelings of a judge?
- iv. If this section were to become law, will a citizen be able to bring a claim against the government because its office conveys information electronically, even this section of this law, which causes them fear and intimidation concerning the enjoyment of their freedom of speech and the press, causing them to engage in self-censorship for fear of fines and jail time if they were to commit this offence? This shows the absurdity of the draft.
- v. **SUGGESTION: Create an offence which only limits communication of material which constitutes threats of violence to the person and or his property.** The offence must be grounded, not in the manner in which people react to the information conveyed, but in the principle that some legitimate right or freedom has truly been breached. **REMOVE all the subjective terms** which criminalize legitimate free speech and press, in the preaching of the Gospel of Jesus Christ and other conscientious beliefs. Remember, that to preach about sin or somebody’s wrong does not constitute violation of their rights and freedoms. Therefore these subjective terms which attempt to define an offence limiting free speech, are not reasonably justifiable in a democratic society.

BEWARE OF THE HEROD PRINCIPLE

Subsection (3) paragraph (b) of clause 16 is dangerous because it criminalizes dissemination of information that “*intentionally or recklessly*” “*exposes the **private affairs** of another person, thereby subjecting that other person to **public ridicule, contempt, hatred or embarrassment**”*

What does “private affairs” mean? It is not defined but it seems to us that it is likely to be defined based upon what the individual whose ‘private affairs’ is exposed, deems it to be. This is dangerous. We note also that the information disseminated may be true. We must beware of the Herod Principle, not to write it into law. We refer here to the account of John the Baptist preaching to King Herod in the Bible. The account may be found in Matthew 14:1-12 and Mark 6:14-29. We cite the former here:

“At that time Herod the tetrarch heard of the fame of Jesus, And said unto his servants, This is John the Baptist; he is risen from the dead; and therefore mighty works do shew forth themselves in him. For Herod had laid hold on John, and bound him, and put him in prison for Herodias' sake, his brother Philip's wife. For John said unto him, It is not lawful for thee to have her. And when he would have put him to death, he feared the multitude, because they counted him as a prophet. But when Herod's birthday was kept, the daughter of Herodias danced before them, and pleased Herod. Whereupon he promised with an oath to give her whatsoever she would ask. And she, being before instructed of her mother, said, Give me here John Baptist's head in a charger. And the king was sorry: nevertheless for the oath's sake, and them which sat with him at meat, he commanded it to be given her. And he sent, and beheaded John in the prison. And his disciples came, and took up the body, and buried it, and went and told Jesus.”

John, preaching the word of God against the sin of adultery, rebuked King Herod publicly, much to Herod and his wife’s displeasure. He was imprisoned and later killed because of his speech which no doubt caused Herod and Herodias his wife ‘embarrassment’ and even “public ridicule”, “contempt” and or “hatred”. The Herod principle is never right, yet this section can write it into law and can be easily used in the same way to incriminate preachers online who may be exposing wrongs of persons in position of influence, citing the word of God as their (the preacher’s that is) authority, calling the individual in wrong to repent, for example. Will we send ministers of the

gospel to jail for their preaching which causes embarrassment? This is outrageous and should be completely removed from the bill.

Similarly, there may be exposure of wrongs within religion; exposure some people say should not take place. It may cause public ridicule of a Muslim if a Christian exposes child molestation by their prophet Muhammed and call persons away from that religion, while propagating his own. He may publish, on the internet, citations of not very well known verses of the Hadith (Islamic Holy books) which prove the truth about Muhammed's taking of a 6 year old bride with whom he consummated the marriage when she was 9 years old. This may bring public ridicule of Muslims, with persons calling their prophet a child molester. Persons may even hate the religion because of it. Should the preacher who exposes these things, using a computer system, be deemed a criminal offender for these things? Should he be sent to jail? This would be tantamount to state sponsored religious persecution of religious persons because of teaching their beliefs to proselytize persons away from other religions to their own. Christian Apostles such as Peter and John, in history in the Bible, have been persecuted while preaching the truth of the gospel of Jesus Christ, under rules that criminalized speech - Acts 4:15-20; Acts 5:17-29. Why? Because the truth they preached exposed the Pharisees and Scribes and subjected them to ridicule and embarrassment because the Apostles plainly preached that they were responsible for murdering Jesus Christ (by giving him up to be crucified).

CLAUSES 28 & 37- EXTREMISM & POSSIBLE DOUBLE JEOPARDY?

Clause 28 is dangerous when we consider the impacts shown on the Right to Religious liberty if clause 16 becomes law. Under this clause 28 if one is convicted of an offence under 16 (and indeed any offence under this law), he will not only be required to pay the fines or go to jail or both as seen under clause 16, but the person could also be faced with an additional court order to pay for loss or damage caused or likely to be caused as a result of the commission of the offence. So in other words the person can receive both criminal penalties and civil penalties. Civil remedies already exist for defamation etc., so it seems the emphasis is on criminalizing civil wrongs, perhaps in order to make them extraditable? This is grossly extreme and potentially constitutes double jeopardy.

Clause 37 says all offences are extraditable. Will we extradite persons for exposing "private affairs" just because it caused public ridicule? Will we extradite pastors also who send messages of warning using the internet, to repent and turn from sins etc. because someone feels the preacher harasses and causes them distress? Will we extradite persons who use a computer system to "cyberbully", from abroad, because their publishing can convey distress and detriment to self-esteem? This would be outrageous! And these persons wouldn't have protection in another country even if the offence in our law is anti-rights and freedoms.

SUGGESTION- Only some offences, such as the more serious "offences affecting critical infrastructure" should be extraditable.

CONCLUSION

The language in the draft bill, especially in clause 16 is vague and subjective. This leaves the way open for the bringing of nonsensical claims before the police and the courts. This will burden the police with insignificant matters and reduce people's access to their (the police) services on more important matters. It will also leave the decision on whether or not an act constitutes a criminal offence up to the arbitrary feelings of a judge. The language will also breed intolerance and thin-skinned attitudes in society because it encourages persons to seek redress before the law, over every communication via a computer system which upsets their feelings. It will also encourage persons to try to use the law to act on revenge and vendetta. The hindrance and interference with free

speech, free expression and free press which will result is against God and unconstitutional. It is not government's duty to hinder free speech because it disturbs feelings. As one author Salman Rushdie once said "What is freedom of expression? Without the freedom to offend it ceases to exist." Additionally, George Orwell said "If liberty means anything at all, it means the right to tell people what they do not want to hear." Finally, we reserve the right, in the face of any law which creates unlawful limitations of our exercise of our God-given right to believe and propagate our beliefs (our religious liberty); no matter how unpleasant it may be to some. For, when it comes to conscience as Peter and the other apostles said, "We ought to obey God rather than men" -Acts 5:29.