

# **INSULT LAWS: INSULTING TO PRESS FREEDOM**

## **A Guide to Evolution of Insult Laws in 2010**

by Patti McCracken  
introduction by Raymond Louw

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of public officials, What can be done about it,” 18 pages, 2000

“It’s a Crime: How Insult Laws Stifle Press Freedom, 2006 Status Report  
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“The Right to Offend, Shock or Disturb, A Guide to Evolution of Insult Laws  
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## BIOGRAPHICAL NOTES

Patti McCracken is an independent American journalist, based in Austria. She was an assistant editor at *The Chicago Tribune* and twice a Knight International Press Fellow. Her articles appear in various publications, notably *Smithsonian Magazine*, *The Christian Science Monitor* and the *Wall Street Journal*. She has more than 15 years experience as a journalism trainer throughout the former Soviet bloc, the Balkans, Southeast Asia and North Africa. She is an assistant professor at Webster University's Vienna campus.

Raymond Louw was editor of the anti-Apartheid newspaper the *Rand Daily Mail* in South Africa for 11 years and until 2011 editor/publisher of the weekly newsletter *Southern Africa Report*. He has campaigned for press freedom most of his professional life. His work against insult law and criminal defamation was part of a longstanding World Press Freedom Committee campaign. The International Press Institute named him a Press Freedom Hero in 2011. He chairs the South African Press Council and is active in the South Africa National Editors Forum.

## INTRODUCTION

### **FURTHERING A FAMILY AFFAIR**

by Raymond Louw

There has been some progress in Africa toward abolition of insult laws and criminal defamation. But there is still far to go. The latest step forward was when Niger's President Mahamadou Issoufou became the first head of state to endorse the Declaration of Table Mountain, a text originated by press NGOs calling for repeal of such laws and to put press freedom higher on the agenda in Africa.

President Issoufou signed the Declaration in a ceremony in his capital of Niamey organized by the World Association of Newspapers and News Publishers (WAN-IFRA), the World Editors Forum, the African Editors Forum, and Niger's Maison de la Presse, with more than 1,000 participants, including ambassadors and government officials from more than 25 countries.

The Declaration of Table Mountain was adopted in Cape Town, South Africa in 2007. Numerous press freedom and civil society groups -- and South Africa's Nobel Peace Prize laureate Archbishop Desmond Tutu, -- have endorsed its call for repeal of laws that give false legal cover for the vast majority of African nations that continue to jail journalists and close media houses on charges of defamation or for "insulting" authorities or their policies. Other African leaders need to follow President Issoufou's example. Some are pledged to do so.

African groups endorsing the Declaration of Table Mountain include the African Editors Forum, Freedom of Expression Institute, Media Institute of Southern Africa, Media Foundation for West Africa, Observatoire-OLPEC, the Egyptian Organization for Human Rights, Institute for the Advancement of Journalism, South African National Editors Forum, Journaliste En Danger, National Union of Somali Journalists and African Media Initiative. In addition to the World Press Freedom Committee and Freedom House, they have been joined in this by such international groups as International PEN, Reporters Without Borders, Article 19, Index on Censorship, International Press Institute, Committee to Protect Journalists, Media Rights Agenda, International Publishers Association and the Media Legal Defense Initiative.

The World Association of Newspapers and News Publishers (WAN-IFRA) adopted the Declaration of Table Mountain at a conference in Cape Town back in June 2007. The aims of that text are easily stated -- abolition by African nations of insult and criminal defamation laws and other restrictions on the operations of the media -- but not so easily brought about.

Alison Meston, Press Freedom Director of WAN-IFRA, who leads her group's campaign on the issue, says: "In country after country, the African press is crippled by a panoply of repressive measures, from jailing and persecution of journalists to the widespread scourge of 'insult laws' and criminal defamation. Through this Declaration, WAN-IFRA has stated its conviction that Africa urgently needs a strong, free and independent press as a watchdog over public institutions."

She notes: "One of the most widely used -- and frequently abused -- elements of justice is criminal defamation, deployed by governments from Algiers to Pretoria, Dakar to Mogadishu, when it comes to suppressing information and silencing critical journalism. Across the continent such laws criminalize journalists, close publications and stifle information otherwise considered crucial to safeguard the public interest. Research into the number of cases based on criminal defamation before the 2007 Declaration, conducted for the World Press Freedom Committee -- an international coalition of press freedom organizations in which WAN-IFRA is active -- revealed an alarming frequency that severely hampers the ability of the press to cover issues of public concern.

"Reporters covering corruption of public officials, police or military conduct, government policy decisions, public spending, even the health of kings or presidents, continue to be systematically hauled to court for defamation. Journalists, editors and publishers across the continent who resist the enormous pressure to self-censor and choose to tackle the so-called 'red lines' head on in their newspapers risk charges of endangering national security, destabilizing the country and -- in extreme cases -- treason. They are frequently jailed for exposing the truth and even in cases where financial compensation is deemed appropriate, pay recompense to plaintiffs. Exorbitant fines often far outweigh actual damage. Assets are seized, publications closed and often the accused risk prison when

unable to pay. Criminalizing defamation deters investigative journalism and reduces the ability of the press to fill its watchdog role.”

The link between an active and independent press, free from government interference and intimidation, is a key step on the road to economic, political and social development. There are many steps along the road involving local, regional and international organizations partnering both on the ground and in the continent’s corridors of power. A major goal in coming months is to amend the African Peer Review Mechanism, a mutually agreed self-monitoring instrument of African Union countries to review governance, so that it includes press freedom amongst its assessment criteria. The Declaration of Table Mountain campaign fits directly with this aim and has been gathering steady momentum on every level. After intense lobbying with policymakers, the African Commission for Human and Peoples’ Rights has adopted a resolution on defamation that provides a real possibility of meaningful change.

In September 2010, the campaign was given a boost when Africa’s leading press freedom advocates -- editors, journalists and activists -- met in Nairobi, Kenya, to support it and form a campaign steering committee to place it in the forefront of press freedom in Africa. Its members include Omar Belhouchet, Director of the Algerian daily *Al Watan*; Cheriff Sy, Director of the publication *Bendré* in Burkina Faso and Deputy Chair of the African Editors Forum; Albert Twizeyimana, a journalist with Radio Rwanda and founder of Journalistes Libres (JOLI); and Gitobu Imanyara, a human rights lawyer, member of the Kenyan Parliament and founder of the *Nairobi Law Monthly*.

So far, Ghana is the only African country to have fully repealed insult and criminal defamation laws, though a handful of others have partially decriminalized them.

The campaign is gathering steam. Amongst the outspoken opponents of criminal defamation in Africa are Pansy Tlakula, the African Union’s Special Rapporteur on Freedom of Expression.

Highlights of activities for the Table Mountain Declaration in 2010-11 included:

- The African Commission on Human and Peoples' Rights passed a resolution to repeal criminal defamation.
- A meeting of the Media Foundation of West Africa, Article 19, Media Law Defense Initiative, Index on Censorship and legal consultant Emmanuel Abdulai decided to launch research into criminal defamation.
- The two leading presidential candidates in Niger signed the Declaration before 1,200 people.
- Editors and media rights defenders attended a daylong seminar on the Declaration for 20<sup>th</sup> anniversary celebrations of the UNESCO-sponsored and endorsed Windhoek (Namibia) Declaration of African journalists, the first text of its kind on international commitment to press freedom.
- Zimbabwe's Prime Minister Morgan Tsvangirai agreed at the World Justice Forum in Barcelona, Spain, to sign the Declaration in a public ceremony in Zimbabwe in 2012
- 10 year celebrations for repeal of criminal defamation in Ghana, resulted in the West African Bar Association and other lawyers taking forward a high profile case to the Court of Justice of the 15-member Economic Community of West African States
- A campaign was launched to test Sierra Leone's criminal defamation laws in the country's Constitutional Court.

I've waged similar campaigns all over Africa where the reception wasn't encouraging. Once, I tried to persuade President Festus Mogae of Botswana to repeal insult laws. He would hear none of it, saying the laws protect poor citizens.

As a member of the South African National Editors Forum, I was the Declaration's leading drafter. For me, this is more than a matter of public interest. It's also a family affair. South Africa has criminal defamation in its common law but has long ceased to apply it. One of the last persons tried for criminal defamation in South Africa was my own son Derek, as editor of the University of Witwatersrand student magazine, *Wits Student*, for "defaming" then-Prime Minister John Vorster and the leader of the United Party opposition Sir De Villiers Graaff.

*Declaration of Table Mountain: <http://www.wan-press.org/article14289.html>*

**France**  
**Hungary**  
**Ireland**

**Italy**  
**Serbia**  
**Slovakia**

**Spain**  
**Turkey**  
**United Kingdom**

## **OVERVIEW OF EUROPE**

The media atmosphere was highly charged in much of Europe. Hungary's controversial media law stirred passions, with many European Union member states urging its repeal. Ireland's new blasphemy law, in an otherwise highly praised 2009 media package, was under the gun. By late 2010, the Irish Parliament planned a referendum vote.

Defamation figured in a court drama in Perugia, Italy: the murder trial of American Amanda Knox. The controversial prosecutor, also under investigation, filed a series of libel suits against Knox, her parents and others.

In France, journalists accused the government of spying on them and were sued over the allegations. Libel tourism became a major issue, specially in Britain, where by late 2010, Parliament was preparing a law on the problem.

In post-Communist Serbia and Slovakia, things looked brighter. Serbia's Constitutional Court rejected restrictions in a 2009 media law. Slovakia's new Prime Minister moved to mend press relations soured by her predecessor.

-- *P. McC.*



## FRANCE

**Population: 62.6 million**

**Press Freedom Rating: Free**

→ A spy scandal clouded the media scene. The online site Mediapart and weekly *Canard Enchaîné* accused officials of using GPS to track journalists. Presidential chief of staff Claude Guéant and domestic intelligence chief Bernard Squarcini, countered the charges with libel suits against both media outlets. The NGO Reporters Without Borders called it intimidation. “It is clear that they are trying to intimidate. Squarcini’s lawyer recognized this by warning other journalists not to repeat the *Canard*’s allegations. The most incredible aspect is that it is now for the journalist to justify themselves.”

→ Internet jurisdiction was the issue in a high profile libel tourism case. Thomas Weiler, a law professor at New York University, faced criminal libel charges over an unfavorable book review on his web site, Global Law Books. The book's author, Karin Calvo-Goller, filed the suit in 2008 after Weiler failed to drop the review from the site. Weiler lives New York, the reviewer lives in Cologne, Germany and Calvo-Goller lives in Israel. The case was heard by the Criminal Tribunal of Paris.

### Relevant Laws

#### Law on Freedom of the Press of 1881

France’s “Law of July 29, 1881 on Freedom of the Press,” prescribes punishments for insult to the President, public officials, and foreign dignitaries. There have been modest reforms in recent years. For example, the “Guigou Law” in 2000 abolished prison terms, but not fines, for press offenses like defamation and insult. The offense of “insulting a foreign head of state,” formerly prohibited by Art. 36 of the law, was abolished in 2004. Yet, some offenses were expanded in recent times, with stiffer penalties, including imprisonment, for defaming or insulting persons for race, religion, sexual orientation or physical disability.

**Art. 23** specifies that those who directly incite another to commit a crime or misdemeanor will be punished as accomplices. This applies to provocations carried out by various means, including speech, cries or threats in public places or at public meetings, in writing, print, drawings, engravings, paintings, insignia, images

or any other medium for writing, words or images, sold or distributed, offered for sale or displayed in publicly, by bills or posters exposed to public sight, or public electronic communication.

**Art. 26:** Offense of the President of the Republic by a means enumerated in Art.23 is punishable by a fine of 45,000 euros (approx. US\$58,500).

**Art. 27:** prohibits publication, distribution or reproduction of false or fabricated news, or news wrongly attributed to third parties, where this is done in bad faith and the news undermines or is susceptible to undermining public peace. A fine of 45,000 euros (approx. US\$58,500) applies. When false news may undermine the discipline and morale of the army or hinder the war effort, the fine may reach 135,000 euros (approx. US\$175,500).

**Art. 29:** Any allegation or imputation of an act that undermines the honor of, or esteem towards, the person or body to which the act is attributed, constitutes libel. Publication or reproduction of such an allegation or imputation is punishable, even when made in the form of a question or if it targets a person or body not specifically named, if their identification is possible by the terms of the speech, cries, threats, writings or printed material, placards or posters.

**Art. 30:** provides that defamation of the courts, armed forces, established bodies and public administrations, by a means listed in Art. 23, is punishable by a fine of 45,000 euros (approx. US\$58,500).

**Art. 31:** The penalties listed in Art. 30 apply to defamation of the following individuals because of their functions or positions: “one or more ministers, one or more members of either House of Parliament, a public official, one who holds or exercises public authority, a minister of religion paid by the State, a citizen temporarily or permanently assigned a public service or mandate, a juror or a witness, because of his testimony.”

**Art. 32:** Defamation of private individuals by a means listed in Art. 23 will be punished by a fine of 12,000 euros (approx. US\$15,600). Defamation by the same means of a person or group of persons because of their origin or their ethnic, national, racial or religious membership will be punished by imprisonment of one

year and/or a fine of 45,000 euros (approx. US\$58,500). The same punishment applies to defamation of a person or group because of gender, sexual orientation or physical disability.

**Art. 33:** Insult by the same means against the entities or persons listed in Arts. 30 and 31 is punishable by a fine of 12,000 euros (approx. US\$15,600). Insult by the same means of private persons, when not preceded by provocation, is also punishable by 12,000 euros (approx. US\$15,600). When the same targets a person or group of people because of their origin or membership of an ethnic, national, religious or racial group, their gender, sexual orientation or physical disability, the applicable punishment is six months' imprisonment and a fine of 22,500 euros (approx. US\$29,250).

**Art. 35:** Truth of the defamatory fact, solely if it relates to their functions, may be established by normal means for allegations against established bodies, the armed forces, public administrations and against all those listed in Art. 31. Truth of defamatory or insulting allegations may also be established against directors or administrators of any industrial, commercial or financial enterprise that publicly seeks (investments through) savings and loans.

The truth of defamatory facts may be proven, except:

- a) When the allegation concerns the person's private life;
- b) When the allegation refers to facts that are more than 10 years old;
- c) When the allegation refers to a fact that constitutes an infraction that has been amnestied or is subject to the statute of limitations, or when the conviction was expunged through rehabilitation or review.

**Art 37:** Public contempt of ambassadors or plenipotentiaries, envoys, chargés d'affaires and other diplomatic agents accredited to the Republic of France is punishable by a fine of 45,000 Euros (approx. US\$58,500).

**Art. 48:** 1) In cases of insult or defamation of the courts and other bodies listed in Art. 30, prosecution shall take place only after they have deliberated in a general assembly and have requested prosecution, or, if the body has no general assembly, upon complaint by the head of the body or the minister to whom the body is attached.

- 2) In cases of insult or defamation of one or more members of either House of Parliament, prosecution shall take place only upon complaint by those concerned.
- 3) In cases of insult or defamation of public officials, those entrusted with public authority or the agents of public authority other than ministers, and of citizens entrusted with a public service or mandate, prosecution shall take place either upon their complaint or automatically upon the complaint of the minister to whom they are attached.
- 4) In cases of defamation of a juror or witness, as provided by Art. 31, prosecution shall follow the complaint of the person who claims to have been defamed.
- 5) In cases of offense against heads of state, or insult of foreign diplomats, prosecution shall take place after their request to the Foreign Affairs Minister and its referral by him to the Justice Minister.

## HUNGARY

**Population: 9.8 million**

**Press Freedom Rating: Free**



In the closing days of 2010, the Hungary Parliament adopted a comprehensive “media package” that was immediately and resoundingly criticized as specially Draconian and in violation of Hungary’s 1949 Constitution, and the European Union’s Charter of Fundamental Rights.

The Media Package overhauled the existing 1996 press law. Under the previous law, the media was already highly politicized, and change was considered necessary. The new law, however, firmly establishes the ruling right wing Fidesz Party as watchdog of the media. Art. 61 of the Constitution making media pluralism obligatory was abolished, and language was inserted on a “citizen’s right to be provided with proper information about public life.” To insure “proper” information, the new law establishes the National Media and Communications Authority, along with the Media Council, a “dual monarchy” responsible for oversight of, and sanctions against, all segments of the media. This includes all foreign media deemed to be intended for a Hungarian audience, including online. The Media Council and the “Authority” -- whose members were appointed to nine-year terms by the Prime Minister -- have full authority to regulate content, interpret the law, prescribe prison terms and fines exceeding \$1 million dollars, and is answerable only to the Prime Minister. All private and public media outlets, including web sites, must register with the Authority, and face penalties of more than \$75,000 for non-compliance.

At 177 pages, the law is bureaucratic and complex, Its overriding feature as it relates to insult is twofold: The language in the Media Package is very vague and open to broadly interpretation. In a letter to Neelie Kroes, European Union Commissioner for the Digital Agenda, the Hungarian Civil Liberties Union expressed grave concern: “Due to these overreaching notions, the law still leaves open the door for arbitrary practice of law. The enhanced legal protection of any ‘persons,’ ‘majorities,’ ‘churches or religious groups’ is gratuitous.”

The Media Package prohibits “violation of privacy,” and “insulting human dignity and public morality.” Since the law is left for the Fidesz-appointed watchdog to

interpret, insult could be alleged for many reasons. Anything interpreted as defaming religion, ethnicity, or even “offending the majority” violates the law.

## **Relevant Laws**

### **Hungarian Constitution of 1949**

**Art 61 (as amended July 6, 2010)** obliges Parliament to pass a law to prevent information monopolies and was amended to provide a “citizen’s right to be provided with ‘proper‘ or ‘adequate‘ information about public life.”

### **Penal Code**

**Act IV of 1978, Sect. 179:** Misdemeanor for stating a fact that may be construed to hurt another’s reputation, or uses an expression directly referring to such a fact. Punishable by up to one year in prison, community service, or a fine. Up to two years in prison if the defamation is committed for a base reason, before a large crowd, or causes considerable injury.

### **Hungary Media Act CIV of 2010**

**Art. 4:** The exercise of the freedom of the press may not constitute or abet an act of crime, violate public morals or prejudice the inherent rights of others.

**Art. 10:** All persons shall have the right to receive proper information on public affairs as well as on any event bearing relevance to the citizens of Hungary.

**Art. 11:** In the Republic of Hungary, the public service media operate to preserve and strengthen integrity both on a national and European level, foster national, family, ethnic and ... religious communities, as well as promote and enrich national and minority languages and culture and meet the needs of citizens for information and culture.

**Art. 13:** 1) All media content providers shall provide authentic, rapid and accurate information on local, national and EU affairs and on any event that relevant to the citizens of the Republic of Hungary and members of the Hungarian nation.  
2) Online and on-demand media content providers engaged in news coverage operations shall provide comprehensive, factual, up-to-date, objective and balanced coverage on local, national and European issues that may be of interest for the

general public and on any event relevant to the citizens of the Republic of Hungary and members of the Hungarian nation.

**Art. 14:** 1) The media shall, in the content it publishes and while preparing such content, respect human dignity.

2) No self-gratifying and detrimental coverage of persons in humiliating or defenseless situations is allowed in media content.

**Art. 16:** The media content provider shall respect the constitutional order of the Republic of Hungary, and its operations may not violate human rights.

**Art. 17:** 1) Media content may not incite hatred against persons, nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious group.

2) May not offend or discriminate -- expressly or implicitly – against persons, nations, communities, national, ethnic, linguistic, and other minorities or any majority as well as any church or religious group.

### **Media Council**

**Art. 182:** Acting within its regulatory powers, the Media Council, in accordance with Art, 132,

(c) shall supervise compliance with requirements set forth in Arts. 13–20 of the Press Freedom Act;

(r) shall act in legal disputes defined in this Act;

**Art. 185:** 1) The Media Council or the Office shall have the right to apply legal consequence on parties infringing rules on media administration in accordance with the provisions of Arts. 186-189.

2) In applying legal consequence, the Media Council and the Office, under the principle of equal treatment, shall act in line with the principles of progressivity and proportionality; shall apply the legal consequence proportionately, in line with the gravity and rate of recurrence of the infringement, taking into account all circumstances of the case and the purpose of the legal consequence.

(i) When the infringement is of minor significance and no recurrence can be established, the Media Council or the Office, on noting and warning on the fact of the infringement, may request, setting a maximum deadline of 30 days, that the

infringer discontinue its unlawful conduct, refrain from infringement in the future and act in a law-abiding manner and may also set the conditions thereof.

(ii) In the context of the request defined under Paragraph (i), the considerations defined in Article 187 (2) shall not apply.

(iii) When, considering all the circumstances of the case, the request may not be applicable or would prove inadequate to force compliance with the obligation to discontinue the infringement, the Media Council or the Office, without stating the reasons for dispensing with a request, shall prohibit the unlawful conduct and/or may set obligations to insure observance of the provisions of this Act and may apply legal consequences.

**Art. 187:** 1. In case of repeated infringement, the Media Council and the Office shall have the right to impose a fine on the senior officer of the infringing entity in an amount not exceeding HUF 2,000,000 (approx. US\$10,840) in line with the gravity, nature of the infringement and the circumstances of the particular case.

3. The Media Council and the Office -- with due heed to Paragraph (7) -- shall have the right to impose the following legal consequences:

a) it may exclude the infringer from the opportunity to participate in the tenders put out by the Fund for a definite period of time;

b) it may impose a fine on the infringer in line with the following limits:

b.a) in case of infringement by a media service provider ... under the regulations on the limitation of media market concentration, the fine shall be an amount not exceeding HUF 200,000,000 (approx. US\$1,083,540);

b.b) in case of infringement by a media service provider beyond the scope of item (b.a), the fine shall be an amount not exceeding HUF 50,000,000 (approx. US\$271,600);

b.c) in the case of a newspaper distributed nationally, the fine shall be an amount not exceeding HUF 25,000,000 (approx. US\$136,000);

b.d) in the case of a weekly periodical distributed nationally, the fine shall be an amount not exceeding HUF 10,000,000 (approx. US\$54,300);

b.e) in the case of other newspaper or weekly newspaper or periodical, the fine shall be an amount not exceeding HUF 5,000,000 (approx. US\$27,160);

b.f) in the case of an online media product, the fine shall be an amount not exceeding HUF 25,000,000 (approx. US\$136,000);

b.g) in the case of a broadcaster, the fine shall be an amount not exceeding HUF 5,000,000 000 (approx. US\$27,160);

- b.h) in the case of an intermediary service provider, the fine shall be an amount not exceeding HUF 3,000,000 000 (approx. US\$16,300);
- c) the infringer may be obliged to publish a notice or the finding on the opening page of its web site, in a media product or a designated program in the manner and for the period of time specified in the finding;
- d) it may suspend the exercise of the media service's right of provision for a specific period of time;
  - d.a) the period of suspension may last from 15 minutes up to 24 hours;
  - d.b) the period of suspension in case of grave infringement may last from one hour to 48 hours;
  - d.c) the period of suspension in case of repeated and grave infringement may last from three hours up to one week.

## IRELAND

**Population: 4.5 million**

**Press Freedom Rating: Free**



The blasphemy law that was part of the 2009 media reform package continued to stir controversy. The new media law was largely lauded as positive because it decriminalized defamation. But blasphemy was established as an offense, for which conviction carries a fine of about US\$36,000.

International media watchdogs were highly critical of the move. Ireland, ranked jointly as first in Reporters Without Borders Press Freedom Index, was dropped to tenth place in the 2010 survey because of the blasphemy law.

Reporters Without Borders commented: “As it stands, this law offers legal grounds to religious extremists of all kinds. It allows them to use the force of the law to impose their views. Ireland has just taken the EU back several centuries.”

Some analysts speculated the law was to address the needs of an increasingly diverse society. Others argued it was in response to avoid offending Muslims. The group “Atheist Ireland” led a highly publicized campaign to repeal the provision. It published on its web site “25 blasphemous quotations,” in an attempt to bait the Irish government into prosecution.

Justice Minister Dermot Ahern defended the provision, saying it filled a “legal void.” But, in March, he announced a referendum to be held in 2011, under which the law could be repealed.

### Relevant Laws

The Defamation Act of 2009 abolished the Defamation Act of 1961, that imposed prison sentences for malicious, knowingly false, obscene and blasphemous libel.

**Defamation Act of 2009:** A defamatory statement is defined in Sect. 2 as “a statement that tends to injure a person’s reputation in the eyes of reasonable members of society.”

**Sect. 6 (2)** of the Act defines defamation as “the publication, by any means, of a defamatory statement concerning a person to one or more than one person (other than the first-mentioned person).” Plaintiffs may ask courts to issue declaratory judgments deeming the statement at issue defamatory; orders to publish corrections; and orders prohibiting the publication of the defamatory statement. Plaintiffs may also seek damages.

**Sect. 31** outlines factors to be considered in determining the amount of damages to be imposed. These include:

- a) the nature and gravity of any allegation in the defamatory statement concerned,
- b) the means of publication of the defamatory statement, including the enduring nature of those means,
- c) the extent to which the defamatory statement was circulated,
- d) the offering or making of any apology, correction or retraction by the defendant to the plaintiff in respect of the defamatory statement,
- e) the making of any offer to make amends under Sect. 22 by the defendant, whether or not the making of that offer was pleaded as a defense,
- f) the importance to the plaintiff of his or her reputation in the eyes of particular or all recipients of the defamatory statement,
- g) the extent (if at all) to which the plaintiff caused or contributed to, or acquiesced in, the publication of the defamatory statement,
- h) evidence given concerning the reputation of the plaintiff,
- i) if the defense of truth is pleaded and the defendant proves the truth of part but not the whole of the defamatory statement, the extent to which that defense is successfully pleaded in relation to the statement,
- j) if the defense of qualified privilege is pleaded, the extent to which the defendant has acceded to the request of the plaintiff to publish a reasonable statement by way of explanation or contradiction, and
- k) any order made under Sect. 33, or any order under that section or correction order that the court proposes to make or, where the action is tried by the High Court sitting with a jury, would propose to make in the event of there being a finding of defamation.

**Sect. 32 (additional types of damages):** 1. Where, in a defamation action:

- a) the court finds the defendant liable to pay damages to the plaintiff in respect of a defamatory statement, and

b) the defendant conducted his or her defense in a manner that aggravated the injury caused to the plaintiff's reputation by the defamatory statement, the court may, in addition to any general, special or punitive damages payable by the defendant to the plaintiff, order the defendant to pay to the plaintiff damages (in this section referred to as "aggravated damages") of such amount as it considers appropriate to compensate the plaintiff for the aggravation of the said injury.

2. Where, in a defamation action, the court finds the defendant liable to pay damages to the plaintiff in respect of a defamatory statement and it is proved that the defendant:

a) intended to publish the defamatory statement concerned to a person other than the plaintiff,

b) knew that the defamatory statement would be understood by the said person to refer to the plaintiff, and

c) knew that the statement was untrue or in publishing it was reckless as to whether it was true or untrue, the court may, in addition to any general, special or aggravated damages payable by the defendant to the plaintiff, order the defendant to pay to the plaintiff damages (in this section referred to as "punitive damages") of such amount as it considers appropriate.

**Sect. 35** abolishes the common law offenses of defamatory libel, seditious libel and obscene libel.

**Sect. 36 (blasphemy):** 1. A person who publishes or utters blasphemous matter shall be guilty of an offense and shall be liable upon conviction on indictment to a fine not exceeding 25,000 euros (approx. US\$36,000).

2. For the purposes of this section, a person publishes or utters blasphemous matter if:

a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and

b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.

3. It shall be a defense to proceedings for an offense under this section for the defendant to prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value in the matter to which the offense relates.

## ITALY

**Population: 60 million**

**Press Freedom Rating: Partly Free**



The ongoing drama over the conviction of American Amanda Knox for the murder in Perugia of her British roommate, Meredith Kercher, sparked a long list of defamation suits in 2010. They were brought by controversial public prosecutor Giovanni Mignini, who was himself charged with abuse of power.

→In October, an Italian judge delayed the defamation trial of Curt Knox and Edda Mellas, charged with criminal defamation for telling a British *Sunday Times* reporter in Washington, that Italian police abused their daughter. Knox and Mellas are the parents of Amanda Knox, convicted of killing her roommate.

→In November, an Italian judge ordered Amanda Knox to be tried for slandering police investigating of her roommate's murder. She accused them of brutality.

→Perugia-based freelance reporter Frank Sfarzo was continually harassed by Italian police over his English-language web site, Perugia Shock, which chronicled events linked to the Kercher murder. In September, Sfarzo alleged he was brutalized by police after they forcibly entered his apartment. A judge charged him with "violence and threats to resist public officials" and "injuring an officer."

→In September, defamation charges were filed against investigative reporter Giangavino Sulas for an article in the newsmagazine *Oggi* critical of prosecutor Mignini, who headed the investigation of the "Monster of Florence," a serial killer in 1968-1985. *Oggi* editor Umberto Brindani was also threatened for defamation.

→*Newsweek* reporter Barbie Latza Nadeau was threatened with criminal defamation for a cover story titled "Berlusconi's Girl Problem," claiming that Italian TV programs degrade women. When she questioned the charge, Nadeau said a policeman called her reporting "a threat," and a form of "intimidation."

→In February, three Google staff got six-month suspended sentences for violating privacy, but were cleared of defamation over a YouTube video of an autistic child being bullied by classmates. Google had taken it down when alerted to the content.

## **Relevant Laws**

### **Penal Code**

**Art. 594** provides that anyone who offends the honor or dignity of a person shall be punished by imprisonment of up to six months or a fine of up to 516 euros (approx. US\$670). This may be increased to up to one year in jail and a fine of 1,032 euros (approx. US\$1,340) if the offense involves attributing a specific fact.

The penalty may be increased if the offense is committed in the presence of several persons. Art. 595 provides that anyone who, when communicating with more than one person, harms the reputation of another, and the case is not covered by the preceding article, shall be punished with imprisonment of up to one year or a fine of up to 1,032 euros (approx. US\$1,340). When the offense consists of attributing a specific fact, the penalty provides for imprisonment up to two years or a fine of up to 2,065 euros (approx. US\$2,685). If the offense is committed via the press or any other means of publicity, or at a public demonstration, the penalty is imprisonment of six months to three years or a fine of no less than 516 euros (approx. US\$670). The law further provides that the penalty shall be increased if the offense targets a political, administrative or judicial body, or one of its representatives.

**Art. 278** provides that anyone who offends the honor or prestige of the President of the Republic shall be punished by imprisonment of one to five years.

**Art. 291** prohibits “publicly vilifying” the Italian nation. Offenses are penalized by fines ranging from 1,000 to 5,000 euros (approx. US\$1,300-6,500).

**Art. 292** provides that insulting the national flag or another State emblem is punishable by a fine of 1,000 to 5,000 euros (approx. US\$1,300-6,500).

When the offense is committed at a formal ceremony or public event, the fines are increased to 5,000 to 10,000 euros (approx. US\$6,500-13,000).

## SERBIA

**Population: 7.8 million**

**Press Freedom Rating: Partly Free**



The media landscape in Serbia improved in 2010. Serbia's Constitutional Court dismissed repressive amendments to the Public Information Act adopted by Parliament in 2009. The Court found they violated the Constitution, and international conventions on press freedom. Interior Minister Ivica Dacic, a former protégé of the late leader Slobodan Milosevic, surprised media watchdogs by leading efforts to prevent attacks against the press.

→ In April, Editor-in-Chief Stojan Markovic was fined \$2,600 for “breach of honor and reputation” to Velimir Ilic, Nova Srbija party leader. The conviction was based on two articles, published in 2009 by *Cacanske Novine*, a satirical journal.

→ Journalist Kristina Demeter Filipcev was charged with defamation for writing that a Serbian Radical Party member uttered “hate speech” at a meeting on jobs for Roma.

→ Two dailies, *Pravda* and *Press*, and Member of Parliament Konstantin Samofalov, were charged with libel by alleged gangleader and drug lord Darko Saric. The suit was filed after Samofalov accused Saric of sparking soccer riots.

→ In December, the newspaper *Press* was ordered to pay \$29,120 damages to singer Svetlana Raznatovic for “mental anguish and tarnished honor and reputation.” The charge was over excerpts of articles from a weekly in which the former Police Minister suggested the singer helped plot her husband's killing in 2000. Zeljko Raznatovic Arkan, known as Arkan, was wanted as a war criminal by Interpol and indicted by the UN for “crimes against humanity.”

### Relevant Laws

#### Penal Code

**Art. 170 (Insult):** 1. Whoever insults another person, shall be punished with a fine ranging from 20 to 100 daily salaries or a fine ranging from 40,000 to 200,000 dinars (approx. US\$600-3,000).

2. If the offense specified in Paragraph 1 of this Article is committed through the press, radio, television or other media or at a public gathering, the offender shall be punished with a fine ranging from 80 to 240 daily salaries or a fine ranging from 150,000 to 450,000 dinars (approx. US\$2,240-6,700).
3. If the insulted person returns the insult, the court may punish or remit punishment of both parties or one party.
4. There shall be no punishment of the perpetrator for offenses specified in Paragraphs 1-3 of this Article if the statement is given within the framework of serious critique in a scientific, literary or art work, in discharge of official duty, journalistic tasks, political activity, in defense of a right or defense of justifiable interests, if it is evident from the manner of expression or other circumstances that it was not done with the intent to disparage.

**Art. 171 (Defamation):** 1. Whoever expresses or disseminates untruths regarding another person that may harm his honor or reputation, shall be punished with a fine ranging from 50 to 200 daily salaries or a fine ranging from 100,000 to 400,000 dinars (approx. US\$1,500-6,000).

2. If the offense specified in Paragraph 1 of this Article is committed through the press, radio, television or other media or at a public gathering, the offender shall be punished with a fine.
3. If the expressed or disseminated untruths have resulted in serious consequences for the injured party, the offender shall be punished with a fine ranging from 120 to 360 daily salaries or a fine from 500,000 to 1 million dinars (approx. US\$7,500-15,000).

**Art. 172 (Dissemination of Information on Personal and Family Life):**

1. Whoever relates or disseminates information of anyone's personal or family life that may harm his honor or reputation, shall be punished with a fine or imprisonment up to six months.
2. If the offense specified in Paragraph 1 of this Article is committed through press, radio, television or other media or at a public gathering, the offender shall be punished with a fine or imprisonment up to one year.
3. If what is related or disseminated resulted or could have resulted in serious consequences for the injured party, the offender shall be punished with imprisonment up to three years.

4. The offender shall not be punished for relating or disseminating information on personal or family life in discharge of official duty, journalistic profession, defending a right or defending justifiable public interest, if he proves the truth of his allegations or if he proves reasonable grounds for belief that the allegations he related or disseminated were true.

5. Truth or falsehood of related or disseminated information from the personal or family life of a person may not be evidenced, except in cases specified in Paragraph 4 of this Article.

**Art. 174 (Spoiling the Reputation of a Nation, National/ Ethnic Groups):**

Whoever publicly ridicules a nation, national or ethnic group living in [Serbia], shall be punished with a fine or imprisonment up to three months.

**Art. 176 (Impunity for Criminal Offenses in Arts. 173-175):** There shall be no punishment of the perpetrator for offenses specified in Arts. 173-175 if the statement is given within the framework of serious critique in a scientific, literary or art work, in discharge of official duty, performing journalistic duties, political activity, in defense of a right or defense of justifiable interests, if it is evident from the manner of expression or other circumstances that it was not done with intent to disparage or if he proves the truth of his allegations or that he had reasonable grounds to believe that what he said or disseminated was true.

**Art. 177 (Prosecution for Offenses against Honor and Reputation):**

1. Prosecution for offenses specified in Arts. 170-172 hereof is undertaken by private action.

2. If offenses specified in Arts. 170-172 hereof are committed against a deceased person, prosecution is instituted by private action of the spouse of the deceased or person cohabiting with the deceased, lineal descendant, adoptive parent, adopted child, or the deceased person's sibling.

3. Prosecution for criminal offense specified in Art. 175 hereof is undertaken upon approval of the ... Public Prosecutor.

## **SLOVAKIA**

**Population: 5.4 million**

**Press Freedom Rating: Free**

Soon after taking office in July 2010, Prime Minister Iveta Radicova addressed the need for a new media law, signaling the possible end to the controversial existing law, enacted in 2008. Relations between the press and Radicova's administration were relatively good, in contrast to the previous government.

→In July, a judge dismissed a defamation suit filed by former Prime Minister Robert Fico against Petit Press, publisher of the daily newspaper *Sme*. Fico sued cartoonist Martin Sutovec for characterizing him as "spineless" in an editorial cartoon that ran July 2009, when Fico was still Prime Minister. Fico sought \$47,530 in damages.

### **Relevant Laws**

#### **Penal Code**

While civil defamation suits have been the main threat to Slovak media, defamation remains a criminal offense under Sect. 373 of the Penal Code of 2006. It provides for prison terms of up to two years, up to eight years in cases of severe harm. Defamation of a nation, race, ethnic group, or religious belief is a separate offense under Sect. 423, providing for up to three years in jail.



## SPAIN

**Population: 45 million**

**Press Freedom Rating: Free**

The European Human Rights Court made history in June 2010 when it ruled that Spain's sentencing of journalist Jose Gutierrez in a case regarding the late King Hassan of Morocco violated the journalist's right to free speech and freedom of the press, which is protected under Art. 10 of the European Human Rights Convention.



The decision ended 15 years' harassment by the government against Gutierrez over a 1995 newspaper report by the now defunct *Diario 16*, of which Gutierrez was chief editor. The paper ran a story about a truck seized with five tons of hashish. *Diario 16* reported that the truck belonged to a company owned by Morocco's royal family. The Crown sued Gutierrez for defamation, based on the 1966 media law, or "*Ley Fraga*," forbidding insults of the King or his relatives. Both the reporter Rosa María López, and Gutiérrez had been convicted, although the article was accurate.

The European Court's decision overturned rulings by three Spanish tribunals, including Spain's Supreme Court, which had levied heavy fines against Gutierrez.

In 2004, the World Press Freedom Committee took up Gutierrez's case, and enlisted support of six other international press freedom groups. WPFC General Counsel Kevin Goldberg called before the European Court for abrogation of two civil laws used against the two journalists: the 1982 Protection of Honor, Privacy and Right to a Respectful Image Law and the 1966 Press and Printing Law. He argued that public figures should have less, not more, protection from alleged insult than ordinary citizens, and that laws against criticism of officials "have no place in democratic society."

WPFC's *amicus curiae* brief was endorsed by the Committee to Protect Journalists, the International Association of Broadcasting, the International Federation of the Periodical Press, the International Press Institute, the Inter American Press Association and the World Association of Newspapers, all members of the Coordinating Committee of Press Freedom Organizations.

WPFC lauded the European Court's upholding of Gutierrez's right to free speech: "The information in question was a matter of general interest. The Spanish public had the right to be informed about drug trafficking in which the Moroccan royal family appeared to be involved, a matter that had moreover been the subject of an investigation before the Spanish criminal courts."

## **Relevant Laws**

### **Penal Code**

**Art. 205:** Calumny consists of accusing someone of a crime with knowledge of falsity or reckless disregard for the truth.

**Art. 206:** Calumny is punishable by six months to two years imprisonment or a fine, of six to 24 months if spread with publicity, or, in other cases, with a fine, of four to ten months [wages].

**Art. 207:** Someone accused of the crime of calumny shall be exempt from all penalties by proving [the truth of] the criminal act that had been imputed.

**Art. 208:** Insult consists of an action or expression that lessens the dignity of another person, damages his reputation or lowers his self-esteem. Only those insults which, by their nature, effects and circumstances, are considered serious by the public shall constitute a crime. Injuries that consist of the imputation of acts that are not considered serious, are not crimes except when they have been carried out with knowledge of their falsity or reckless disregard for the truth.

**Art. 209:** Serious insults done with publicity are punishable by a fine of six to 14 months [wages], and in other cases, by a fine of three to seven months [wages].

**Art. 210:** Someone accused of insult shall be exempted of responsibility by proving the truth of the imputations when they are directed against public officials for acts concerning the exercise of their duties or referring to criminal acts or administrative violations.

**Art. 211:** Calumny or insult will be considered to have been done with publicity when spread by the print media, broadcast or any other medium with similar effect.

**Art. 212:** In the cases referred to in the previous article, sole liability will be with the individual or the corporation that is the proprietor of the information medium through which the calumny or insult was spread.

**Art. 490 (3):** Calumny or insult of the King, or any of his ancestors or descendants, of the Queen Consort or the consort of the Queen, of the Regent or any member of the Regency, or of the Heir Apparent to the Crown, in the exercise of his or her duties or because of those duties, is punishable by six months to two years imprisonment if the calumny or insult is grave, or a fine of six to 12 months [wages] if the calumny or insult is not grave.

**Art. 491:** 1. Calumnies and insults against any of the persons mentioned in the previous article and outside the terms of that article shall be punished with a fine of four to 20 months [wages].

2. Use of the image of the King or of any of his ancestors or descendants, or of the Queen Consort or the consort of the Queen, or of the Regent or of any member of the Regency, or of the Heir Apparent, in a manner that damages the prestige of the Crown is punishable by a fine of six to 24 months [wages].

## TURKEY

**Population: 75.8 million**

**Press Freedom Rating: Partly Free**



Journalists in Turkey work in an atmosphere of intimidation, harassment and threat, a situation that has continued to worsen. A Freedom House report lowered Turkey's press freedom ranking in 2010 from 51 to 54, the largest drop for any Western European country. According to the Turkish Journalists Union, thousands of lawsuits are filed against reporters yearly, many under a controversial anti-terror law. 550 cases were filed against the pro-Kurdish daily *Ozgur Gundem*, most of which were unsettled in late 2010.

→ In July, Meral Tamer was acquitted on appeal for insult charges filed against her by former President Suleyman Demirel in a case that originated a decade earlier. Tamer, a reporter for the daily newspaper *Milliyet*, was sentenced to a 16-month suspended prison sentence for two 1999 articles on a 7.4 magnitude Turkish earthquake. In 2007, the European Human Rights Commission ruled the conviction unlawful. Tamer filed an appeal in Turkey based on the European decision.

→ Baris Yarkadas, editor of the online journal *Gercek Gundem*, was acquitted of "insulting the President" for failing to remove a comment posted on the site by a reader. Yarkadas had faced a prison sentence of more than five years.

→ Yalçın Ergüdoğan was fined nearly \$1,300 for "violating the personal rights" of Haydar Baş, Chairman of the Independent Party of Turkey (BTP), based on a 2005 article for the newspaper *Birgün*. Ergüdoğan did not attend the trial, but said in a statement: "The behavior of a public figure who is the leader of a political party should be brought to attention, and criticism should be tolerated."

→ In May, the daily newspaper *Vakit* was ordered to pay nearly \$450,000 to more than 300 generals, who sued for libel over a 2003 article. The paper appealed on grounds that the article criticized just two of the generals.

→Nazli Ilicak of the newspaper *Sabah* was convicted for a second time of defaming a judge. Both convictions were for the same article from 2009. In the first conviction, she got a suspended sentence of nearly 12 months; in the second conviction, she was fined about \$3,600. The paper's owner was also convicted.

→In October, Ismail Saymaz was charged with “insult” and two other counts -- “violation of the secrecy of an investigation” and “attempt to influence a fair trial.” The reporter, who writes for the newspaper *Radikal* faces up to 79 years in prison.

→Cengiz Candar, a reporter for the daily *Referans*, was charged with “insulting a public servant in the performance of his duties.” The charge is for a February 2010 column criticizing the judge presiding at the murder trial of a fellow journalist.

→Rasim Ozan Kütahyali, a columnist for the daily *Taraf*, was accused of “humiliating the army” in an opinion piece criticizing the naming of a regiment for a general convicted of killing 33 Kurdish villagers in 1943. Kütahyali was charged with “denigrating the Turkish people” and faced up to two years in jail.

→Journalist Temel Demirer was charged with “denigrating the Turkish people” for commenting on the 2007 murder of Turkish-Armenian editor Hrant Dink. Demirer alleged that Dink was murdered for recognizing the Armenian genocide.

→Mustafa Koyuncu, a reporter for the newspaper *Emirdag*, was charged with libel for a 2007 article on police misconduct. He faced up to six years in prison and a fine of more than \$31,600.

→Poet and columnist Ataol Behramoglu, who criticized the ruling party during a television debate, faced a possible \$14,000 fine.

## Relevant Laws

### Penal Code

**Art. 125 (Defamation):** 1. A person who makes an allegation of an act or concrete fact undermining or attacking another person's honor, reputation, dignity or prestige shall be sentenced to imprisonment for a term of three months to two years

or a judicial fine will be imposed. Where an insult was made in the absence of the victim, the act must have been witnessed by at least three persons for a conviction.

2. If the act is committed by means of an oral, written or visual message addressing the victim, the perpetrator shall be sentenced to the penalties above.

3. If the offense of defamation is committed in the following circumstances, the minimum sentence imposed is one year:

a) against a public official or a person performing a public service and the allegation is connected with his public status or the public service he provides;

b) because of the expression, change, or efforts for expansion of one's religious, political, social or philosophical beliefs, thoughts and opinions, or one's compliance with religious rules and prohibitions;

c) through mentioning the holy values of the religion of which the person is a member.

4. When the defamation is committed publicly, the penalty shall be increased by one-sixth.

5. In case of insults to public officials working on a committee, because of their duties, the offense shall be deemed to have been committed against all committee members. ...

**Art. 130 (Defamation of a Deceased Person):** Anyone who commits, according to the testimony of at least three persons, the offense of defamation of the memory of a dead person shall be imprisoned for a term of three months to two years, or punished by a judicial fine. If the offense is committed in public, it shall be increased by one sixth.

**Art. 299 (Insulting the President of the Republic):** 1. A person who defames the President of the Republic shall be imprisoned for a term of one to four years.

2. The penalty to be imposed shall be increased by one sixth if the offense is committed publicly.

**Art. 300 (Insulting the Symbols of State Sovereignty):** 1. A person who denigrates through tearing, burning or by similar means, and publicly, the Turkish flag shall be sentenced to imprisonment for a term of one to three years. This provision is applicable to any kind of sign bearing the white crescent and star on red field that, as stipulated in the Constitution, are used as the indicators of the sovereignty of the State of the Republic of Turkey.

2. A person publicly insulting the National Anthem shall be punishable with a penalty of imprisonment of six months to two years.
3. If the crime defined in the present paragraph is committed by a Turkish citizen in a foreign country, the penalty shall be increased by one third.

**Art. 301 (from 8 May 2008) (Denigrating the Turkish Nation, the State of the Turkish Republic, the Institutions and Organs of the State):** 1. A person who publicly denigrates Turkish Nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey or the judicial bodies of the State shall be sentenced to a penalty of imprisonment for a term of six months to two years.

2. A person who publicly denigrates the military or security structures shall be punishable according to the first sub-clause.
3. Expressions of thought intended to criticize shall not constitute a crime.
4. Prosecution under this article are subject to approval by the Justice Minister.

**Law on Crimes Committed Against Atatürk (Law No. 5816):** Anyone who publicly insults or curses the memory of [Turkish Republic founder Kemal] Atatürk shall be imprisoned with a sentence of between one and three years. ... If the crimes outlined in the first Article are committed by a group of two or more individuals, or publicly, or in public districts or by means of the press, the penalty imposed will be increased by one half.

## UNITED KINGDOM

**Population: 61.6 million**

**Press Freedom Rating: Free**

Britain has become increasingly burdened with, and embarrassed by, the rise of “libel tourism.” In 2010, more than ever before, the British courts were used by foreign businesspeople and celebrities to sue publications based elsewhere and that had no viable readership in the United Kingdom. In late 2010, a move was afoot by lawmakers to stamp out the practice, involving sweeping changes to Britain’s anachronistic defamation law.



In one of the more notorious cases, the American business magazine *Forbes* was sued in England by two Russian businessmen, Boris Berezovksy and Georgi Glouchkov, for an article that alleged corruption and gang-like activity by tyem. *Forbes* sold some 780,000 copies of that issue in the United States, but only 6,000 in Britain. Rather than continue a costly legal battle, *Forbes* settled the case.

Journalists have not been the only targets of libel tourism. A cardiologist consultant, who criticized a new implant device at a medical conference in the United States, was sued in England for his remarks.

In 2009, Lord Chancellor Jack Straw ordered an in-depth review of civil defamation laws, and Parliament agreed to bring forward a Defamation Bill during the 2011/2012 parliamentary session.

**Azerbaijan**  
**Belarus**

**Kazakhstan**  
**Russia**

**Uzbekistan**

## **OVERVIEW OF FORMER SOVIET UNION**

Criminal defamation and insult were used as a strong weapon of oppression throughout the region.

Kazakhstan's chairmanship of the OSCE (Organization for Security & Cooperation in Europe) in 2010, had no positive impact on the media situation in the country. In fact, more reporters were in jail in 2010 than at any time since Kazakhstan broke away from the Soviet Union. Oligarchs and government officials routinely won large defamation settlements against newspapers with limited resources.

In Uzbekistan, President Karimov empowered a small state agency with the muscle for it to pursue insult charges against reporters aggressively, especially outspoken reporters. In one case, a Russian reporter was convicted of an "insult to the Uzbek people" for articles on his web site. The Uzbek court trying the case barred Russian officials from the courtroom, even though the trial was open to the public.

Russian authorities bombarded reporters with criminal defamation suits throughout the year, but ordinary citizens were also subjected to insult prosecutions. The grieving mother of a fallen soldier was convicted of "insulting the honor and dignity" of a regional governor for picketing a military site.

Bullying and intimidation often preceded criminal libel suits in Belarus. In several instances, newsrooms were raided, as were private homes, and private property was seized.

-- *P.McC.*

## AZERBAIJAN

**Population: 8.8 million**

**Press Freedom Rating: Not Free**



In 2009, government officials were praised for publicly stating libel would be decriminalized, but in 2010 they backtracked. Thomas Hammarberg, the Council of Europe's Human Rights Commissioner, said decriminalization was a "matter of urgency." But the government defended the current law, arguing that the lack of journalistic professionalism was why libel continued to be criminalized.

→ Journalist Eynulla Fatullayev, chief editor of the newspapers *Gundalik Azerbaijan* and *Realniy Azerbaijan*, was already serving an 8.5 year sentence on a number of charges when a court in July sentenced him to 2.5 years more for alleged heroin possession. Media analysts believe the drug charge was brought against Fatullayev to insure his continued imprisonment after the European Human Rights Court cleared him on all previous counts. In October, the European Court refused to hear the government's appeal, and Fatullayev was eventually exonerated by the Azerbaijan Plenum of the Supreme Court. He was then sentenced, however, to 2.5 years for tax evasion.

Fatullayev frequently reported on the 2005 murder of Elmar Huseynov, editor-in-chief of *Monitor* magazine. In March, Fatallayev alleged that a National Security Ministry official had masterminded the unsolved murder. Fatullayev's supporters believe his imprisonment was to prevent his further investigation of the murder.

→ In November, *Guzgu* newspaper reporter Kamran Bayaliyev was sentenced to one year of "corrective labor" for "hooliganism," and "inflicting intentional bodily injury." Many considered this retribution for a 2009 article Bayaliyev wrote on corruption by local authorities.

### Relevant Laws

#### Penal Code

**Art. 147 Slander:** 1. Slander is the distribution of obviously false information that discredits the honor and dignity of any person or undermines his reputation in a

public statement, or in materials circulated in the public domain or the mass media. It is punishable by a fine of 100 to 500 nominal financial units, or by community service for up to 240 hours, or by corrective labor for up to one year, or imprisonment for up to six months.

2. Slander combined with an accusation of committing serious or especially serious crime is punishable by corrective labor for up to two years, or restriction of liberty for up to two years, or imprisonment of up to three years.

**Art. 148 Insult:** Insult is the deliberate humiliation of a person's honor and dignity, expressed in unacceptable terms in a public statement or in materials circulated in the public domain or the mass media. It is punishable by a fine of 300 to 1,000 nominal financial units, or community service for up to 240 hours, or by corrective labor for up to one year, or imprisonment for up to six months.

**Art. 283.1 Incitement of national, racial or religious enmity:** Actions aimed at inciting national, racial or religious enmity, at debasing national dignity, as well as at restricting citizens' rights or establishing their superiority on the basis of their national, racial or religious affiliation, committed publicly or through the use of mass media, is punishable by a fine ranging from 1,000 to 2,000 nominal financial units, or restriction of liberty for up to three years, or imprisonment from two to four years.

**Art. 323 Humiliation of the honor and dignity of the President of Azerbaijan:** 1. Humiliating the honor and dignity of the President of the Azerbaijan Republic in a public statement, a product circulated publicly or through the use of mass media, is punishable by a fine of 500 to 1,000 nominal financial units, or corrective labor for up to two years, or imprisonment for the same term. 2. Where such acts are connected to accusations of the commission of a serious crime, these are punishable by imprisonment from two to five years.

**Art. 324 Offensive Action Against the National Flag or State Emblem of the Azerbaijan Republic:** Offensive actions against the national flag or the state emblem of the Azerbaijan Republic is punishable by a restriction of liberty for up to two years, or imprisonment for up to one year.

## BELARUS

**Population: 9.6 million**

**Press Freedom Rating: Not Free**



The government cracked down on the media after demonstrators protested the Dec. 19 election results. Officials raided several newsrooms, and detained more than 20 reporters, five of them foreign correspondents. 22 other journalists reported being physically attacked during the crackdown, including Michael Schwartz and James Hill of *The New York Times*.

→ Under the law, the government may shut down a news outlet after two “warnings” in one year. Warnings were issued to *Komsomolskaya Pravda v Belorussiy*, *Hantsavitski Chas* and *Brestskaya Gazeta*, for allegedly publishing false information. *Nasha Niva* lost an appeal to dismiss two warnings against it. and on March 11, the Information Ministry issued a warning to the popular daily *Komsomolskaya Pravda v Belorussiy* for publishing "false information."

→ Former KGB Chairman Ivan Korzh filed defamation charges against several police officers whom he claimed had leaked information about Korzh to reporters. As part of Korzh’s defamation charges, raids were conducted on the newsrooms of *Narodnaya Volya* and *Charter97*, where editor Natallya Radzina was reportedly struck in the face by security officers, who entered the premises by force. The private homes of several reporters were also raided, and computer equipment was confiscated, as well as a private vehicle. The reporters were interrogated by police several times.

In a separate defamation suit, *Charter97* was investigated for critical comments made by bloggers. *Charter97* faced a third defamation suit, based on unidentified material security officers allegedly found in the previous raid.

→ In December, journalist Dzmitry Rastaeu was fired for criticizing the government after a local “ideology officer” put pressure on the publisher.

→ In January, reporter Anatol Mazgouand and his employer *Borisovskie Novosti* were convicted of “insult” over an article about a member of the municipal government. They were fined \$670.

→ In July, the editor of a journal with fewer than 300 subscribers was charged with “criminal libel” of a local official. Syarhey Panamarou fled Belarus to escape prosecution.

→ Andrey Poczobut, a correspondent for Polish daily newspaper *Gazeta Wyborcza*, was charged with “insult to the head of state” for his articles in that paper and other publications. At year’s end, he was being detained awaiting trial.

## **Relevant Laws**

### **Constitution**

**Art. 28** says “everyone is entitled to protection against unlawful interference with... his honor and dignity.”

**Art. 79** forbids insults to the President.

### **Electoral Code**

The electoral code prohibits “insulting or defaming the honor and dignity of official persons, presidential and parliamentary candidates.”

### **Penal Code**

**Art. 188:** 1. The dissemination of fabrications that discredit another person [and are] known to be unfounded, committed within one year of administrative prosecution for defamation or insult, is punishable by community service, or a fine, or corrective labor for up to one year, or detention for up to three months, or limitation of freedom for up to two years.

2. Defamation contained in a public speech, or in a printed or publicly performed work, or in the mass media, or defamation accusing [someone] of committing a serious or very serious crime, is punishable by a fine, or corrective labor for up to two years, or detention for up to six months, or limitation of freedom for up to three years, or a prison sentence of up to two years.

**Art. 189:** 1. Deliberate degradation of the honor and dignity of an individual, expressed in an indecent manner, committed within one year of administrative prosecution for defamation or insult is punishable by community service, or a fine, or corrective labor for up to one year, or limitation of freedom for up to two years. 2. An insult made in a public speech, or in a printed or publicly performed work or in the mass media is punishable by a fine, or corrective labor for up to two years, or detention for up to three months, or limitation of freedom for up to three years, or a prison sentence for up to two years.

Art. 367: “Defaming the President of the Republic of Belarus” applies to any public pronouncement, printed or publicly displayed work, or in the media and may draw a fine, correctional labor of up to two years, or imprisonment of up to four years. If the convicted individual has previously been found guilty of defamation, the maximum possible prison sentence is five years.

**Art. 368:** “Insulting the President of the Republic of Belarus” stipulates that a public insult would draw a fine or two years imprisonment. If the convicted person has previously been found guilty of insult, the maximum prison term is three years.

**Art. 369** criminalizes insult of “a representative of the authorities.” Possible punishment includes a fine, correctional labor or deprivation of liberty for up to three years.

**Art. 369-1** criminalizes discrediting the Republic of Belarus vis-a-vis foreign states and foreign or international organizations, defined as knowingly giving false information about the Belarusian State or its organs or for providing a foreign state, foreign or international organization with knowingly false information on the political, economic, social or military situation in Belarus.

## KAZAKHSTAN

**Population: 15.6 million**

**Press Freedom Rating: Not Free**

During its 2010 chairmanship of the Organization for Security & Cooperation in Europe, Kazakhstan drafted changes to its media law. Critics complained the changes were cosmetic and far from decriminalizing insult. More journalists were imprisoned in 2010 than any time in the country's post-Soviet history. Press fines for "moral damages" exceeded \$280,000 by mid-year.



→ In February, a Kazakhstan court prohibited the press from publishing anything to damage the reputation of the President's son-in-law, Timur Kulbayev, a prominent businessman. Kulbayev earlier filed libel suits against four newspapers -- *Respublika*, *Moya Respublika*, *Vzglyad* and *Kursiv*. All published an article by an exiled politician accusing Kulbayev of embezzlement. The ban lasted a week.

→ *Central Asia Monitor* was sued by Kazakhstan Development Bank and six firms for "protection of honor, dignity and business reputation" after the paper reported the companies could not repay the bank. Plaintiffs sought \$2.4 million and seizure of assets. In August, a judge dismissed the case and ordered the property returned.

→ *Uralskaya Weekly* was ordered to pay \$136,000 "moral damages" to Tengizneftstroy construction company after an article by Luqpan Akhmediyarov revealed the company began preparing for a profitable state-funded project long before it won the bid. Plaintiffs sought \$467,000. Separately, *Uralskaya Weekly* was sued by a high school head for "damage to his honor and dignity." Plaintiff sought \$33,000 for an article on a confrontation between him and pupils' parents.

→ Opposition weekly *Respublika* was ordered to relinquish funds allotted for printing, for a 2009 libel suit fine. *Respublika* was to pay more than \$400,000 to BTA Bank for reporting alleged misconduct in transfer of ownership. As of February, *Respublika* paid only \$47,474, a hefty sum for a Kazakh local weekly.

## Relevant Laws

### Penal Code

**Art. 129 (Libel and Slander):** 1. Libel, that is the distribution of deliberately false information which is defaming to the honor and dignity or another person, or which undermines his reputation, shall be punished by a fine in an amount from 100 up to 250 minimum monthly wages, or in an amount of wages or other income of a given convict for up to two months, or by engagement in public work for from 120 up to 180 hours, or by correctional labor for up to one year.

2. Slander which is contained in a public speech, or in a publicly displayed work, or in mass information media, shall be punished by a fine in an amount from 200 up to 500 minimum monthly wages, or in an amount of wages or other income of a given convict for from two to five months, or by engagement in public work for from 180 up to 240 hours, or by correctional labor for from one year up to two years, or by restriction of freedom for up to two years, or detention under arrest for up to six months.

3. Slander combined with an accusation of a person in the commission of a grave or an especially grave corruption crime, shall be punished by restriction of freedom for up to three years, or deprivation of freedom for the same period.

**Art. 130 (Insult):** 1. An insult, that is the debasement of the honor and dignity of another person, expressed in an obscene form, shall be punished by a fine up to 100 minimum monthly wages, or in an amount of wages or other income of a given convict for up to one month, or by engagement in public work for up to 120 hours, or by correctional labor for up to six months.

2. An insult contained in a public speech, or in a publicly demonstrated work, or in the mass information media, shall be punished by a fine from 100 up to 400 minimum monthly wages, or in an amount of wages or other income of a given convict for from one to four months, or by engagement in public work for up to 180 hours, or by correctional labor for up to one year, or by restriction of freedom for the same period.

**Art. 317 (Outrage against the State Flag, the State Coat of Arms, or the State Hymn of the Republic of Kazakhstan):** Outrage against the State Flag, the State Coat of Arms, or the State Hymn of the Republic of Kazakhstan, shall be punished by a fine of 200 to 1,000 minimum monthly wages, or in an amount of wages or other income of a given convict for from two to ten months, or by

restriction of freedom for up to two years, or by detention under arrest for from three to six months, or by imprisonment for up to one year.

**Art. 318 (Infringement of Honor and Dignity of the President of the Republic of Kazakhstan and Impeding His Work):** 1. A public insult or other infringement upon the honor and dignity of the President of the Republic of Kazakhstan, shall be punished by a fine in an amount from 200 up to 700 minimum monthly wages, or in an amount of wages or other income of a given convict for from two to seven months, or by engagement in public works for from 180 up to 240 hours, or by correctional labor for up to one year, or by detention under arrest for up to five months, or by imprisonment for up to one year.

2. The same act committed with the use of the mass information media, shall be punished by a fine in an amount from 500 up to 1,000 minimum monthly wages, or in an amount of wages or other income of a given convict for from five to ten months, or by correctional labor for from one year up to two years, or by detention under arrest for up to six months, or by imprisonment for up to three years.

**Art. 319 (Degrading Honor and Dignity of a Deputy, Impeding His Work):** 1. A public insult to a deputy of the Parliament of the Republic of Kazakhstan when he is executing his deputy obligations or in relation to the execution of them, shall be punished by a fine in an amount from 100 up to 500 minimum monthly wages, or in an amount of wages or other income of a given convict for from one to five months, or by engagement in public works for up to 180 hours, or by correctional labor for up to one year, or by restriction of freedom for the same period, or by detention under arrest for up to four months.

2. The same act committed with the use of the mass information media shall be punished by a fine in an amount from 300 up to 800 minimum monthly wages, or in an amount of wages or other income of a given convict for from three to eight months, or by correctional labor for from one to two years, or by restriction of freedom for up to two years, or by detention under arrest for up to six months, or imprisonment for up to two years.

**Art. 320 (Insulting a Representative of the State Authorities):** 1. A public insult of a representative of the state authorities when he is executing his service duties or in relation to their execution shall be punished by a fine in an amount from 100 up to 400 minimum monthly wages, or in an amount of wages or other income of a

given convict for from one to four months, or by engagement in public works for up to 180 hours, or by correctional labor for up to one year, or by restriction of freedom for the same period, or by detention under arrest for up to three months.

2. The same act committed with the use of mass information media shall be punished by a fine in an amount from 300 up to 700 minimum monthly wages, or in an amount of wages or other income of a given convict for from three to seven months, or by correctional labor for up to two years, or by restriction of freedom for up to two years, or by detention under arrest for up to six months, or by imprisonment for up to one year.

## RUSSIA

**Population: 140.3 million**

**Press Freedom Rating: Not Free**

As Russia's parliament, the Duma, considered changes to the 1992 media law, authorities continued to hit journalists with a barrage of criminal defamation and insult lawsuits during 2010.



→ In December, criminal slander charges were dismissed against outspoken journalist Mikhail Beketov of *Khimkinskaya Pravda*, accused of defaming Khimki's Mayor Vladimir Strelchenko in a 2007 interview. Beketov alleged in the interview that the mayor was responsible for torching Beketov's car to retaliate for the reporter's article criticizing a highway project the mayor backed. A year later, Beketov was brutally attacked in his front yard. His leg and several fingers had to be amputated. He was unable to walk or speak. The attackers have not been found.

→ The European Court of Human Rights found Russian courts in violation of Art. 10 of the European Human Rights Convention in the defamation conviction of the editorial board of the regional edition of *Novaya Gazeta*. The Court ruled that Russian courts had "set an excessively high standard of proof that would hardly be admissible even in criminal cases." The courts were ordered to pay *Novaya Gazeta* some \$1, 200, to reimburse the paper's original fine. The case went back to 2002, for an article accusing a local mayor, a businessmen and two other local officials of embezzlement and other illegal practices. The court concluded that since no criminal proceedings were filed against the plaintiffs for the fraud alleged by the newspaper, the article must have been false.

→ In August, Alma Bukharbayeva was convicted of "insulting the honor and dignity" of Omsk Gov. Leonid Polezhayev. She is the mother of a slain soldier. She picketed an Omsk military building with a sign saying, "Putin and Polezhayev are killers of our children! Now kill us, the mothers!" The governor withdrew the suit days after he won the case, possibly because of media pressure.

→ *New Times* was raided by police several times over articles alleging corruption in the police special units (OMON). The paper was sued for libel and a court ordered documents and transcripts to be turned over as evidence.

→ In January, a Moscow court proceeded with a libel case against *Novaya Gazeta*, despite Moscow city police requests not to pursue it. The suit was filed by Chechen leader Ramzan Kadyrov over the 2009 murder of his former bodyguard, shot in Vienna as he left a grocery store. Kadyrov later dropped the charges.

## Relevant Laws

### Penal Code

**Art. 129. Defamation:** 1. Defamation, that is the spreading of deliberately falsified information that denigrates the honor and dignity of another person or undermines his reputation, shall be punishable by a fine in the amount of 50 to 100 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to one month, or by compulsory work for a term of 120 to 180 hours, or by corrective labor for a term of up to one year, or by corrective labor for a term of up to one year.

2. Defamation contained in a public speech or in a publicly performed work, and mass media libel, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two months, or by compulsory work for a term of 120 to 180 hours, or by corrective labor for a term of one year to two years, or by arrest for a term of three to six months.

3. Defamation accusing a person of committing a grave or especially grave crime shall be punishable by restraint of liberty for a term of up to three years, or by arrest for a term of four to six months, or by deprivation of liberty for a term of up to three years.

**Art. 130. Insult:** 1. Insult, that is the denigration of the honor and dignity of another person, expressed in indecent form, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to one month, or by compulsory work for a term of up to 120 hours, or by corrective labor for a term of up to six months.

2. Insult contained in a public speech, in a publicly performed work, or in mass media, shall be punishable by a fine in the amount of up to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to two months, or by compulsory work for a term of up to 180 hours, or by corrective labor for a term of up to one year.

**Art. 297. Contempt of Court:** 1. Contempt of court, expressed as an insult of trial participants, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two months, or by compulsory work for a term of 180 to 240 hours, or by arrest for a term of two to four months.

2. The same deed, expressed as an insult of a judge, juror, or any other person participating in the dispensation of justice, shall be punishable by a fine in the amount of 200 to 500 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of two to five months, or by corrective labor for a term of one to two years, or by arrest for a term of four to six months.

**Art. 298. Libel of a Judge, Juror, Prosecutor, Investigator, a Person**

**Conducting Inquests, Bailiff, or Officer of the Court:** 1. Libel against a judge, juror, or any other person taking part in the dispensation of justice, in connection with the examination of cases or materials in court, shall be punishable by a fine in the amount of 200 to 500 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of two to five months, or by corrective labor for a term of one to two years, or by arrest for a term of three to six months, or by deprivation of liberty for a term of up to two years.

2. The same deed, committed against a prosecutor, investigator, a person conducting inquests, bailiff, or officer of justice, in connection with a preliminary investigation or with the execution of a court's sentence or decision, or any other judicial act, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two months, or by corrective labor for a term of up to two years, or by arrest for a term of three to six months, or by deprivation of liberty for a term of up to two years.

3. Deeds stipulated in the first or second part of this Article, and joined with the accusation of a person of committing a grave or especially grave crime,

shall be punishable by deprivation of liberty for a term of up to four years.

**Art. 319. Insult of a Representative of Authority:** Public insult of a representative of authority during the performance of his official duties, or in connection with the performance thereof, shall be punishable by a fine in the amount of 50 to 100 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to one month, or by compulsory works for a term of 120 to 180 hours, or by corrective labor for a term of six to twelve months.

**Federal Law No. 114-FZ of 25 July 2002, Law on Counteracting Extremist Activities:** Since July 2006, the Anti-Extremism Law includes, in the categories of extremist activities specified in Art. 1, knowingly false accusations of extremism aimed against “anyone holding an official position in the Russian Federation, or a subject of the Russian Federation, while on official duty or in connection with his/her official duties.”

**Art. 8. Warning of the Inadmissibility of Distribution of Extremist Materials and Accomplishment of Extremist Activity through Mass Media:** In the event of distribution through the mass media of extremist materials or exposure of facts, testifying of the presence in its activity of signs of extremism, the director and (or) editorial staff (chief editor) of the given mass media source authorized by a government body having registered the given source of mass information, or the federal body of executive power in the sphere of print, television or radio broadcasting and means of mass communication, or the General Prosecutor of the Russian Federation, or a proper subordinate prosecutor, will issue a warning in writing on the inadmissibility of such actions or such activity with an indication of the concrete foundations for issuance of the warning, including the committed violations. In the event that it is possible to adopt measures to eliminate the admissible violations, the warning letter will also establish a time frame for elimination of the noted violations, consisting of not less than 10 days from the day of the issuance of the warning. The warning may be appealed in court according to the established order. In the event that a warning has not been appealed in court in the established order or has not been declared illegal by a court, or if during the time frame established by the warning, measures have not been adopted to eliminate the committed violations serving as the basis for pronouncement of the

warning, or if within 20 months from the day of pronouncement of the warning, new facts are exposed which testify to the presence of signs of extremism in their activity, the respective provider of mass information will be subject to discontinuance of activity, in the order established by the Federal Law.

**Art. 11. Responsibility of Mass Media Providers for Distribution of Extremist Materials and Conduct of Extremist Activities:** Distribution of extremist materials and conduct of extremist activity through mass media is prohibited in the Russian Federation. In the event envisioned in part three of Art. 8 of the present Federal Law, or in the event of conduct of extremist activity through mass media, bringing about violation of the rights and freedoms of persons or citizens, causing harm to personality, health of citizens, environment, social order, national security, property, legal economic interests of physical and (or) legal entities, society and government, or creating a realistic threat of causing such harm, the activity of the respective provider of mass information may be discontinued by court order on the basis of the declaration of the authorized government body of executive power in the sphere of print, television or radio broadcasting and means of mass communication, or the General Prosecutor of the Russian Federation or a proper subordinate prosecutor.

Consistent with the goal of preventing the continued dissemination of extremist material, a court may enjoin the printing of issues of periodic publication or circulation of audio or video recordings or programs, or the issuance of corresponding television, radio or video programs, in the order established for adopting such measures according to the provision of a suit. A court decision is grounds for confiscation of unrealized portions of circulation of a mass media production containing material of extremist nature from places of storage, wholesale or retail trade.

## UZBEKISTAN

**Population: 27.8 million**

**Press Freedom Rating: Not Free**



President Islam Karimov used “experts” of the obscure Agency for Press & Information to build up massive defamation and insult law campaigns against reporters. High profile or controversial journalists were often targeted for “insulting the Uzbek population,” although no Uzbek law is known to support such a broad definition.

→ In October, Russian reporter Vladimir Berezovsky was convicted of libel and “insult against the Uzbek people,” for several articles that appeared on the now defunct news site he edited, *vesti.uz*. Berezovsky, who is also a reporter for Russia’s *Parlamentskaya Gazeta*, was not sentenced. Berezovsky was the first foreign reporter tried in Uzbekistan. Although the trial was open to the public, Russian officials were barred from attending.

→ Voice of America reporter Abdumalik Boboev was convicted of three press-related charges, including libel and insult, and ordered to pay approximately \$11,000 in fines. American diplomats observed the trial.

→ Well-known photographer Umida Ahmedova was convicted in February of “insulting the Uzbek people” after the publication of her book portraying Uzbek village life and tradition. A self-proclaimed panel of experts, including religious affairs specialists and psychologists, determined that Ahmedova’s photographs showed Uzbekistan in a negative light. She faced up to three years in prison but was amnestied for the 18<sup>th</sup> anniversary of Uzbek independence.

### Relevant Laws

#### Penal Code

**Art. 139** prohibits disseminating “false, defamatory information.” Where an offender has previously received an administrative penalty for this offense, the applicable penalty consists of a fine up to 50 minimum monthly wages or correctional labor of up to two years. Under aggravated circumstances, the offender shall be punished by imprisonment of up to three years.

If the offense is committed in a printed or otherwise copied text, or via mass media, the penalty consists of a fine ranging from 50 to 100 minimum monthly wages or correctional labor of two to three years, arrest of up to six months, or imprisonment of up to six years.

**Art. 140** criminalizes insult, defined as “intentional grievous degrading of the honor and dignity of a person.” Where an offender has previously received an administrative penalty for this offense, the applicable punishment consists of a fine of up to 50 minimum monthly wages or correctional labor of up to one year. If the insult is committed via a printed or other copied text, or the mass media, the applicable punishment consists of a fine of 50 to 100 minimum monthly wages or correctional labor of one to two years. Where the insult is aimed at someone in connection with their performance of a professional or civil duty, or a repeat offender is involved, the applicable penalty consists of a fine of 100 to 150 minimum monthly wages, correctional labor of two to three years, or arrest of up to six months.

**Art. 158** prohibits various offenses against the President of the Republic of Uzbekistan, including “public affront or denigration” via printed or other mass media. This is punishable by correctional labor of up to three years, arrest up to six months, or imprisonment of up to five years.

**Art. 215** prohibits “disrespecting” the State flag, emblem, or anthem of the Republic of Uzbekistan or the Republic of Karakalpakstan. The offense is punishable by a fine of up to 25 minimum monthly wages, correctional labor of up to three years, or arrest of up to three months.

<b>Botswana</b>	<b>Ethiopia</b>	<b>Niger</b>
<b>Burundi</b>	<b>Gambia</b>	<b>Rwanda</b>
<b>Cameroon</b>	<b>Ivory Coast</b>	<b>Senegal</b>
<b>Dem. Rep. of Congo</b>	<b>Mauritania</b>	<b>Sierra Leone</b>
		<b>Zimbabwe</b>

## **OVERVIEW OF SUB-SAHARAN AFRICA**

During elections throughout the region, authorities used criminal defamation to intimidate and silence the news media in numerous crackdowns.

In Ivory Coast, security forces temporarily shut down all opposition newspapers, and in Gambia, a major newspaper was forced to close for five months.

Journalists in Ethiopia worked under a special election "Code of Conduct." In Burundi, the media situation quickly darkened during elections, as the government aggressively pursued "criminal defamation" and charges of "treason" to suppress the media.

Lengthy prison sentences were imposed on reporters in Rwanda for "contempt of head of state" and "inciting public disorder." Many reporters fled the country rather than serve go to jail on trumped up charges.

There were some bright spots. In Uganda, the Constitutional Court rejected criminal sedition on the grounds that it violated Uganda's constitution. In Sierra Leone, passage of a freedom of information act raised hope that seditious libel and defamation would be decriminalized.

After Niger's president Mamadou Tandja was overthrown in a military coup, the new government quickly moved to set up a media oversight body and to decriminalize libel.

-- *P.McC.*

## **BOTSWANA**

**Population: 1.9 million**

**Press Freedom Rating: Partly Free**

→ Tribal chief Kgosi Kgafela settled out of court a “contempt” suit against several newspapers. *Mmegi*, *Monitor*, *Sunday Standard* and *The Echo* reported on the increase in floggings since Kgosi became chief, and resulting suits against him by his alleged victims.



### **Relevant Laws**

#### **Penal Code (1964)**

**Art. 50 (Seditious Intention):** is defined as, among other things, the intention “to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of Botswana as established by law; to bring into hatred or contempt or to excite disaffection against the administration of justice.”

**Art. 51 (Seditious Offenses)** provides that “any person who . . . utters any words with a seditious intention . . . prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication . . . imports any seditious publication, unless he has no reason to believe that it is seditious,” is guilty of an offense and “liable to imprisonment for a term not exceeding three years; and any seditious publication shall be forfeited to the State.” The article bans possessing seditious publications, and specifies that printing machines used to print such materials may be seized or temporarily confiscated.

**Art. 60 (Defamation of Foreign Princes):** Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb the peace and friendship between Botswana and the country to which such prince, potentate, ambassador or dignitary belongs, is guilty of an offense.

**Art. 90 (Offensive conduct conducive to breaches of the peace):** Any person who in a public place or at a public gathering uses threatening, abusive or insulting

words or behavior is guilty of an offense and is liable to imprisonment for a term not exceeding six months.

**Art. 91 (Insults relating to Botswana):** Any person who does any act or utters any words or publishes any writing with intent to insult or to bring into contempt or ridicule:

- a) the Arms or Ensigns Armorial of Botswana;
- b) the National Flag of Botswana;
- c) the Standard of the President of Botswana;
- d) the National Anthem of Botswana; is guilty of an offense and liable to a fine not exceeding 500 pula (approx. US\$75).

**Art. 93 (Abusive, obscene or insulting language on President and others):** Any person who in a public place or at a public gathering uses abusive, obscene or insulting language in relation to the President, any other member of the National Assembly or any public officer is guilty of an offense and liable to a fine not exceeding 400 pula (approx. US\$60).

**Art. 192 (Definition of criminal defamation):** Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the offense termed criminal defamation.

**Art. 193 (Definition of defamatory matter):** Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation.

**Art. 194 (Definition of publication):** 1. A person publishes defamatory matter if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery, or otherwise, that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

2. It is not necessary for criminal defamation that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged defamation itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

**Art. 195 (Definition of unlawful publication):** Any publication of defamatory matter concerning a person is unlawful within the meaning of this Division, unless:

- a) the matter is true and it was for the public benefit that it should be published;
- b) it is privileged on one of the grounds hereafter mentioned in this Division.

**Art. 196** outlines circumstances in which publishing defamatory matter is absolutely privileged, such as when the material is published under authority of the President or in the National Assembly. In such cases, falsity and bad faith are not considered relevant.

**Art. 197** specifies circumstances in which publishing defamatory matter is conditionally privileged, meaning it is privileged if also published in good faith, and the parties involved were under a legal, moral or social duty to publish/receive the publication.

**Arts. 198 and 199** specify when publishing a defamatory matter shall not be deemed to have been committed in good faith, and outlines circumstances in which good faith is presumed.

## **BURUNDI**

**Population: 8.5 million**

**Press Freedom Rating: Not Free**

Relations between the media and government went from hopeful to hostile during 2010 elections. Repression of free speech reached levels not seen in recent years. Journalists reported an increase in threats and attacks, and opposition parties fled the country.



→ Jean-Claude Kavumbagu, editor of online news site Netpress, was charged with treason and defamation. Kavumbagu published an article critical of the Burundi security forces following a suicide bombing by Al Shabab, a Somali terrorist group. At year's end, he was still imprisoned. In 2008, Kavumbagu was jailed for seven months, charged with defamation for an article on misuse of public funds during a visit to the Olympic Games in Beijing. He was acquitted.

→ In August, Thierry Ndayishimiye, Editor in Chief of *Arc-en-Ciel* weekly, was charged with defamation for a story he published about corruption at Regideso, the state-run energy company. He was awaiting trial at year's end.

### **Relevant Laws**

#### **November 2003 Media Law (Law no. 1/025):**

**Art. 50:** Notwithstanding the relevant sections of the Penal Code, a publisher, editor or journalist who publishes information that insults the head of state or is defamatory or insulting to a public or private individual, shall be punished by a term of imprisonment of six months to five years and a fine of 100,000 to 300,000 Burundi francs (approx. US\$82-247). The penalty is harsher than that imposed in the Penal Code.

#### **Penal Code (April 2009)**

**Art. 251** provides that, anyone who maliciously and publicly imputes a specific fact to another, of a nature so as to affect the person's honor or esteem or expose the person to public contempt, shall be punished by imprisonment of one month to one year and a fine of 10,000 to 100,000 Burundi francs (approx. US\$8-82), or only one of these penalties.

**Art. 252** provides that anyone who publicly insults another person shall be punished by imprisonment of one month to one year and a fine of 10,000 to 100,000 Burundi francs (approx. US\$8-82), or only one of these penalties.

**Art. 378** prohibits contemptuous words, gestures, threats or acts against a person in public service, in the course of or in connection with the performance of his or her duty, which are abusive, defamatory and likely to impair the dignity of his or her public function.

**Art. 379** provides that insult against the Head of State is punishable by a prison term of six months to five years and a fine of 10,000 to 50,000 (approx. US\$8-41).

**Art. 381** specifies that, where the insult is addressed to the Head of State, a parliamentarian, a government official, a magistrate, an officer or agent of public authority or law enforcement officials in the course of or in connection with the exercise of their duties, the perpetrator is punished by six months to two years in prison and a fine of 50,000 to 100,000 Burundi francs (approx. US\$41-82), or one of these penalties. When the insult takes place at a meeting or a public meeting or during a court hearing, the penalties consist of six months to three years imprisonment and a fine of 50,000 to 200,000 francs (approx. US\$41-164), or one of these penalties.

**Art. 383** prohibits publicly insulting, defacing or destroying the flag or national symbol of the Republic of Burundi. Punishments range from two months to five years' imprisonment and a fine of 10,000 to 50,000 Burundi francs (approx. US\$8-41), or one of these penalties

## CAMEROON

**Population: 19.5 million**

**Press Freedom Rating: Not Free**

The law gives the government the authority to criminalize civil libel suits at will. Libel threats are routinely used to discourage journalists investigating corruption.



→ Jean Bosco Talla was released from jail after a month upon paying \$6,800 in damages. Talla, publication director of *Germinal* weekly, was convicted of “insulting” the President for printing excerpts of a book alleging homosexuality among high officials. He had been sentenced to a one-year suspended prison term.

→ Author Bertrand Teyou was convicted of “insult to character” of the President’s wife upon the release of his book “The Belle of the Banana Republic: Chantal Byia, From the Streets to the Palace.” He was also charged with organizing an “illegal demonstration” for scheduling a public reading. He notified authorities beforehand and was arrested before the reading could proceed. Prosecution was swift. Teyou could not get a lawyer in time. He was ordered to pay \$4,371 damages or serve a two-years term. Unable to pay, he began his term in November.

### Relevant Laws

#### Penal Code

**Sect. 152:** 1. Defines contempt as “any defamation, abuse or threat conveyed by gesture, word or cry uttered in any place open to the public, or by any procedure intended to reach the public.”

2. Applies the same defenses to contempt that apply to defamation, including legislative and judicial privilege, privilege for accurate reports of legislative and judicial proceedings, and fair comment and criticism.

3. Provides a four-month statute of limitations.

**Sect. 153:** 1. Contempt of the President or Vice-President of the Republic, “of any person exercising the whole or a part of their prerogatives,” or of any foreign head of state, punishable by one to five years imprisonment and/or a fine of 20,000 to 20 million CFA francs (approx. US\$45-45,000).

2. Contempt of “any head of government, or of any foreign minister of a foreign government, or of a diplomatic representative accredited to the government of the Republic,” punishable by six months to two years imprisonment and/or a fine of 20,000 to 20 million CFA francs (approx. US\$45-45,000).

Truth is not a defense.

**Sect. 154:** Contempt (a) of any court, any of the armed forces, or “any public body or public administration”; or (b) “in relation to his office or position, of any member of a government or assembly, federal or federated, or of any public servant,” punishable by 10 days to one year imprisonment and/or a fine of 20,000 to 20 million CFA francs (approx. US\$45-45,000). Truth is a defense in defamation cases.

**Sects. 305, 306:** A general criminal defamation law, defining defamation as “factual imputations that injure a person’s honor or reputation.” A number of defenses, including truth under certain circumstances, and absolute and qualified privileges, are recognized. Defamation of the dead is punishable if the intent is “to injure the honor or reputation” of a living spouse or heirs. Punishment is six days to six months jail and/or a fine of 5,000 to 2 million CFA francs (approx. US\$10-4,500), halved for non-public defamation, doubled for anonymous defamation.

**Sect. 307:** 1. “Abuse,” defined as publicly using, without provocation, “any insulting expression, or contemptuous gestures or words, or invective without imputation of fact,” is punishable by five days to three months imprisonment and/or a fine of 5,000 to 100,000 CFA francs (approx. US\$10-230).  
2. A complaint by the injured party or his representative is needed for prosecution.  
3. Four-month statute of limitations.  
4. Applies to abuse of the memory of a deceased person if the intent is “to injure the honor or reputation” of a living spouse or heirs.

## DEMOCRATIC REPUBLIC OF CONGO

**Population: 67 million**

**Press Freedom Rating: Not Free**

Journalists reporting corruption are routinely placed in “preventive detention,” although many criminal defamation cases never go to trial. Defamation suits are used to disrupt investigations and encourage self-censorship.



→ *Africa News* publisher Achille Kadima Mulamba was fined \$10,000 and sentenced to eight months in prison for “defamation” for accusations of embezzlement against an official at the European Development Fund. Mulamba was free on appeal late in the year.

→ Tumba Lumembu was charged with “insulting the head of state” for remarks to friends in public. Lumembu, a reporter for *Tempête des Tropiques*, disappeared for two weeks until the UN pressured ANR (Congolese national intelligence agency) into admitting it was holding him, whereupon the insult charge was brought against him. Lumembu often wrote political pieces criticizing the government.

→ Kambale “El Kate” Maghaniry of Radio Television Gabren Beni (RTGB) was sentenced to two years in prison for defaming a police official. He went into hiding and was sentenced in absentia.

→ In July, Pascal Mulunda was charged with “criminal defamation” over an article he wrote accusing a Mining Ministry official of fraud. Mulunda is editor of the weekly *Le Monitor*. The article also appeared in *Le Barometre*.

→ Popol Ntula, publisher of *Le Tonnerre*, was arrested in April and charged with defaming a local mayor in an article critical of the mayor’s rule. Ntula Vita was held in custody for 30 days and released on \$335 bail.

### Relevant Laws

#### 2004 Code of Ethics for Journalists

**Art. 5:** Bans insults, defamation, allegations, alteration of documents, twisting of facts and misrepresentations. The section also bans incitement of hatred -- ethnic,

religious, regional, and racial -- and any other form of support for negative values in the media.

**1996 Press Law (No. 96-002)**

**Art. 10:** specifies that all writings may be disseminated by the press, so long as these do not undermine public order, morals, or the honor and dignity of individuals.

**Art. 77:** prohibits insulting the Head of State.

**Art. 78:** includes in the definition of treason knowingly participating in an effort to demoralize the army or the public in the goal of national defense.

**Penal Code\***

**Art. 74:** Anyone who maliciously and publicly imputes to another person a specific fact, of a nature as to undermine the honor or esteem for that person, or expose that person to public contempt, shall be punished by imprisonment of eight days to one year and a fine, or one of these penalties.

**Art. 75:** Anyone who publicly insults a person shall be punished by imprisonment of eight days to two months and a fine, or one of these penalties.

**Art. 76:** Punishment consisting of imprisonment of up to five years and a fine, or only one of these penalties, will be imposed on:

1. anyone who makes a slanderous denunciation, in writing or verbally, to a judicial authority or a public officer with authority to act thereon;
2. anyone who makes to another person, in writing or verbally, slanderous accusations against his subordinate.

**Art. 77:** Insults not addressed in the preceding section shall be punished by imprisonment of eight days and a fine, or only one of these penalties.

**Art. 136:** 1. Anyone who, with words, facts, gestures or threats, insults a member of the *Bureau Politique* [since abolished], a member of the National Assembly, of government or the Constitutional Court, in the exercise or because of the exercise

of their functions, is punishable by imprisonment of six to 12 months and a fine, or only one of these penalties.

2, Anyone who, with words, facts, gestures or threats, insults other authorities or the police force, in the exercise of because of the exercise of their functions, is punishable by imprisonment of seven to 15 days and a fine, or one of these penalties.

**Art. 137:** Insults committed against constitutional bodies are punishable in the same manner as those committed against the members of such bodies.

*\*The Penal Code, enacted in 1940, specifies possible penalties in zaires, the country's former currency. It does not appear to have been updated since then. This translation therefore omits the penalty amounts in the original text.*



## **ETHIOPIA**

**Population: 84.9 million**

**Press Freedom Rating: Not Free**

In the run-up to May 2010 elections, journalists were issued a “Code of Conduct” by the election board, restricting their movements and limiting their ability to cover the electoral process.

→ 17-year-old Akram Ezedin was detained in September, reportedly for articles critical of the Islamic Council. Ezedin is acting editor of *Al Quds*. He took over in January after his father, the editor, was sentenced to a year in jail for defaming the prime minister in a 2008 interview with *The Guardian* of London. Although his father was released, Ezedin was still in prison at year’s end and had not been charged. Pretrial detention is illegal.

### **Relevant Laws**

**The Freedom of the Mass Media and Access to Information Proclamation (No. 590/2008)** entered into force in December 2008. It repealed the Press Proclamation No. 34/1992.

**Sect. 41(2)** provides that, in an action for defamation through mass media the court may award, with regard to gravity of the moral damage, compensation up to 100,000 birr (about US\$7,500).

**Sect. 43 (7)** provides that prosecutions for defamation and false accusation against persons or private organizations through the mass media shall be instituted and conducted by private plaintiffs. The section explicitly excludes prosecutions for false accusation and defamation against “the constitutionally established legislative, executive or judicial authorities.”

### **Penal Code (2005)**

**Art. 244 (Attacks against the State and National and other Emblems): 1.** Whoever, by word or by deed or in any other way, abuses, insults, defames or slanders the State in public, is punishable with simple imprisonment for not less than three months or with a fine not less than 500 birr (US\$38).

The act of defamation, slander, abuse or insult is deemed to be committed as defined under Arts. 613 and 615.

2. Whoever, maliciously, or with contempt or any other similar intent, publicly tears down, sets on fire, destroys, injures, defaces, insults or in any other way abuses an officially recognized national emblem, such as the flag or insignia of Federal Ethiopia or the Regional States, is punishable with simple imprisonment for not less than three months or fine.

**Art. 264 (Insults to Foreign States):** 1. Whoever in any way publicly abuses, insults, defames or slanders by word of mouth or by deed, a foreign State, either directly or in the person of its Head, of one of its constituted authorities, of one of its accredited diplomatic representatives or of one of its official representatives or delegates in the territory of Ethiopia, is punishable with simple imprisonment or fine.

2. In grave cases, especially in a case of slander, simple imprisonment shall be for not less than three months.

**Art. 265 (Insults to the Official Emblems of Foreign States):** Whoever, out of ill will, hatred, contempt or other improper motives tears down, destroys, defaces, insults or in any other way abuses the emblems of sovereignty of a foreign State with which Ethiopia maintains peaceful relations, particularly its insignia or national flag publicly hoisted by an official representative of such State, is punishable with simple imprisonment or fine.

**Art. 266 (Insults to inter-State Institutions):** Whoever publicly insults the representatives or the official emblems of an interstate institution or organization to which Ethiopia belongs is liable to the punishment provided for under Art. 265.

**Art. 449 (Contempt of Court):** 1. Whoever, in the course of a judicial inquiry, proceeding or hearing:

a) in any manner insults, holds up to ridicule, threatens or disturbs the Court or a judge in the discharge of his duty; or

b) in any other manner disturbs the activities of the Court, is punishable with simple imprisonment not exceeding one year, or a fine not exceeding 3,000 birr (approx. US\$225). The Court may deal with the crime summarily.

2. Where the crime is not committed in open Court but while the judge is

carrying out his duties, the punishment shall be simple imprisonment not exceeding six months, or fine not exceeding 1,000 birr (approx. US\$75).

**Art. 613 (Defamation and Calumny):** 1. Whoever, addressing a third party, imputes to another with the intent to injure his honor or reputation, an act, a fact or a conduct, where the allegation accords with the truth, is punishable, upon complaint, with simple imprisonment not exceeding six months, or fine. Statements made concerning a crime of which a person has been found guilty, has duly served the sentence or has been granted pardon or amnesty, with intent to injure his honor or reputation, shall be considered as defamation and are punishable under the preceding Article.

2. Where the defamatory imputations or allegations constituting the injury to honor or reputation are false and are uttered or spread with knowledge of their falsity, the criminal is punishable upon complaint, for calumny with simple imprisonment for not less than one month, and fine.

3. Where the criminal has acted with deliberate intent to ruin the victim's reputation, he shall be punished, upon complaint, with simple imprisonment for not less than three months, and fine.

4. Where the imputation or allegation is false and made negligently, it is punishable, upon complaint, with simple imprisonment not exceeding one year, or fine.

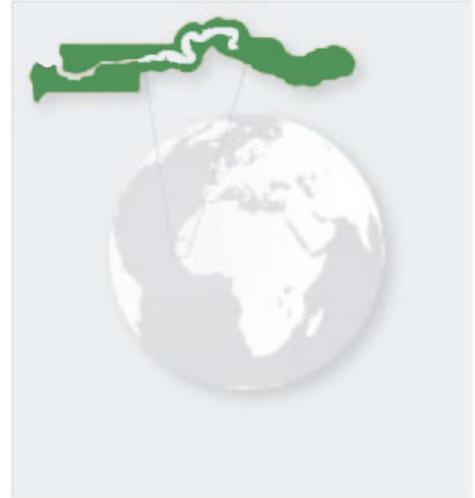
**Art. 615 (Insulting Behavior and Outrage):** Except in cases where it is punishable as a petty offense (Art. 844), anyone directly addressing the victim, or referring to him, offends him in his honor by insult or injury, or outrages him by gesture or in any other manner, is punishable, upon complaint, with simple imprisonment not exceeding three months, or fine not exceeding 300 birr (approx. US\$23).

**Art. 618 (Special Cases Aggravating the Crime):** 1. Where the defamation or calumny, insult or outrage, has been deliberately committed against a public servant in the discharge of his official duty, or in relation thereto, the criminal is punishable, upon complaint:

a) with simple imprisonment not exceeding six months, and a fine not exceeding 1,000 birr (approx. US\$75) in cases of insult or outrage;

- b) with simple imprisonment from one month to one year, and a fine in cases of defamation; or
- c) with simple imprisonment for not less than three months, and a fine in cases of calumny; or
- d) with simple imprisonment for not less than six months, and a fine, in cases of a deliberate act to ruin the victim's reputation.

2. Nothing in this Article shall affect the special provisions relating to injury to the honor of the State (Art. 244), to insults to foreign States and interstate institutions (Arts. 264 and 266), to insults to a military superior (Art. 297) and to contempt of Court (Art. 449).



## **GAMBIA**

**Population: 1.7 million**

**Press Freedom Rating: Not Free**

→ Autocratic President Yahya Jammeh issued an executive order to reopen *The Standard* newspaper, which was shut down for five months by the National Intelligence Agency. No reason was given for the closure.

→ Reporting to the United Nations Human Rights Council, the government of Gambia denied wrongdoing in the detention of Ebrima Manneh, arrested by security forces from the *Daily Observer* newsroom in 2007, allegedly for planning to publish articles critical of the government. No disclosure has been made of his whereabouts or conditions of detention.

→ In June, the Gambia government was ordered to pay Musa Saidykhan \$200,000 in damages over torture he endured while illegally detained in 2006 by security forces following an alleged coup attempt. Saidykahn, editor in chief of the *Independent*, was subjected to electric shocks during his three-week detention, along with other forms of torture that often left him unconscious. He is in exile in the United States.

### **Relevant Laws**

Two rounds of amendments to the country's Penal Code (in 2004 and 2005) increased penalties for seditious intention and seditious publication, prohibited by Sects. 51 and 52, respectively. Seditious intention is broadly defined, and includes intention to "bring into hatred or contempt or to excite disaffection against" the President, administration of justice or government of Gambia, or against its inhabitants. Promoting "feelings of ill will and hostility" among different segments of Gambia's population is also punishable. The law does, however, provide that such statements may be deemed non-seditious if they were meant to show that the President was misled or mistaken, or were meant to promote the remedying of wrongs in government or society.

**Sect. 52** covers conspiracy to act with seditious intent, "uttering" seditious

words, as well as seditious publication (which includes printing and selling such publications). Anyone guilty of such an offense must pay a fine between 50,000 and 250,000 dalasis (approx. US\$1,950-9,700) or be imprisoned for no less than one year. Offenders may also be both imprisoned and required to pay the fee. Finally, any “seditious publication” involved in the offense “shall be forfeited to the State.” The same punishment applies to anyone found, without lawful excuse, to possess “any seditious publication.”

Defamation is a criminal offense under Sect. 178 of the Penal Code, and, since July 2005, is similarly punishable by a fine ranging from 50,000 to 250,000 dalasis (approx. US\$1,950-9,700), imprisonment of one year or more, or both. Conspiracy to commit criminal defamation is an offense under Sect. 368.

**Sect. 181** provides the same punishment as for criminal defamation for the offense of publishing or broadcasting false information.

## IVORY COAST

**Population: 21.6 million**

**Press Freedom Rating: Not Free**



After disputed elections, media experienced a crackdown. Journalists were harassed for reporting on the election aftermath. The Republican Guard shut opposition papers for a day. French TV France 24 was forced off air for several days for “unbalanced and unprofessional treatment of information.”

→ A prominent journalist for *L’Intelligent d’Abidjan*, Traoré Médandjé, was convicted of “criminal defamation” and sentenced to a year in jail and a \$10,000 fine. In 2009, Médandjé alleged former Health Ministry official Andre Tia was operating illegal health clinics. Tia was fired and sued Médandjé. He accused the reporter of blackmail, alleging that three interviews by Médandjé in three different places were an extortion attempt. Médandjé was free on appeal at year’s end.

### Relevant Laws

A press law introduced in December 2004 (Law 2004-643) abolished prison terms for press offenses, imposing large fines instead. Journalists have nonetheless since been sentenced to jail for offenses under the Penal Code, including defamation.

### Press Law (2004-643)

**Art. 68** specifies that press offenses are not punishable by imprisonment.

**Art. 72** lists offenses punishable by judicial seizure of copies of the publication. Offenses include insulting the President, Prime Minister and foreign heads of state.

**Art. 74:** The offense of insulting the President of the Republic consists of any defamatory allegation involving his public or private life that affects his honor or dignity. Proceedings may be initiated by the prosecutor without prior complaint by the President.

**Art. 75:** In cases of insult of the Prime Minister or presidents of institutions, the proceedings may not be initiated by the prosecution without prior complaint by the aggrieved party.

**Art. 76:** In cases of insult of foreign heads of state and governments, the proceedings may not be initiated by the prosecution without prior complaint by the aggrieved party.

**Art. 77:** The offenses outlined in Art. 72 (1-3,9) and in the Arts. 73, 74, 75 and are punishable as follows: in cases of insult or contempt, fines range from 10- 20 million CFA francs (approx. US\$22,600-45,000); in other cases, fines range from 5-15 million CFA francs (approx. US\$11,300- 34,000).

**Art. 78:** All allegations or imputations of fact that affect the honor or esteem of the individual or body to whom the fact is imputed constitute defamation. The direct publication or reproduction of the allegation or imputation is punishable even if made in the form of a question or it targets a person or body not expressly named, where their identification is possible by the terms of the offending discussion, cries, threats, drawing, film, writing, printed material or posters. Every outrageous expression, term of contempt or invective that does not impute any facts constitute insult.

**Art. 79:** Defamation of courts, tribunals, the armed forces, constitutional courts or public administrations is punishable by a fine ranging from 5-15 million CFA francs (approx. US\$11,300-34,000).

**Art. 80:** Defamation of one or more members of government, National Assembly members, or citizens charged with a temporary or permanent public mandate or service, jurors or witnesses due to their given testimony, by reason of their function, is punishable by the fines outlined in the preceding article.

**Art. 81:** Defamation of a group who belong, by origin, to a particular race, ethnic group, tribe or religion, is punishable by a fine ranging from 5-15 million CFA francs (approx. US\$11,300-34,000). Defamation of individuals is punishable by 5-15 million CFA francs (approx. US\$11,300-34,000).

**Art. 82:** Publication of false information is punishable by a fine ranging from 5-10 million CFA francs (approx. US\$11,300-22,600).

**Art. 83:** Insult against bodies or persons specified in Arts. 79, 80 and 81 is punishable by a fine ranging from 5-15 million CFA francs (approx. US\$11,300-34,000). Insult against individuals is punishable by a fine from 5-15 million CFA francs (about US\$11,300-34,000).

### **Penal Code (1981)**

**Art. 173:** Publication, dissemination, disclosure, or reproduction by any means whatever, of false news, fabricated or falsified pieces, or falsely attributed to others, is punishable by imprisonment of one to three years and a fine of 500,000 to 5 million CFA francs (approx. US\$1,130-11,300), if it results or can result in disobedience to laws, affronts public morals or discredits institutions or their functions.

If the publication, dissemination, disclosure or reproduction is made in the press, the following will be liable under the penalties outlined in the preceding paragraph as principle authors: managers or co-managers or editors, or printers, sellers, distributors or those who display the material. When managers, co-managers or editors are involved, the authors will be pursued as accomplices.

**Art. 174:** Anyone who, by gesture, cries, threats, in writing, image, printed material, document, sign or poster, or by any other means of sound or of a visual nature, be it in a public place or a place open to the public, by any means permitting audio or visual contact with the public, directly provokes theft, murder, looting, arson or destruction of buildings, or any of the infractions specified in this present chapter, shall be punished:

1. in case the provocation is followed by an infraction, by the same penalty applicable to those committing the infraction;
2. in case the provocation is not followed by an infraction, by imprisonment of one to five years and a fine ranging from 300,000 to 3 million CFA francs (approx. US\$680-6,800).

**Art. 199:** Defamation, insult or threats carried out in the circumstances outlined in Art. 174, toward a group of people who belong by origin to a particular race, ethnic

group or religious group, is punishable by a penalty of imprisonment of one month to one year, and a fine ranging from 100,000 to 1 million CFA francs (approx. US\$226-2,260). If the infraction is committed in the press, radio or television, these penalties are doubled.

**Art. 243:** Anyone who, in circumstances indicated in Art. 174, offends the President of the Republic, will be punished by imprisonment of three months to two years and a fine of 300,000 to 3 million CFA francs (approx. US\$680-6,800), or one of these penalties.

**Art. 244:** Anyone who, in circumstances indicated in Art. 174, publicly offends a foreign head of state or government, will be punished by imprisonment of three months to two years and a fine of 300,000 to 3 million CFA francs (approx. US\$680 to 6,800), or one of these penalties.

**Art. 245:** Insult committed in circumstances indicated in Art. 174 toward plenipotentiaries, envoys, chargés d'affaires and other diplomatic agents accredited by or on mission for the government of Ivory Coast is punishable by imprisonment of 15 days to one year and a fine of 100,000 to 1 million CFA francs (approx. US\$226-2,260), or one of these penalties.

**Art. 246:** Anyone who, with malicious intent, contempt or similar sentiment, in a public place, open or exposed to the public, destroys, degrades or offends the national emblem or the national coat of arms, is punishable by a penalty of imprisonment of one month to two years and a fine of 20,000 to 200,000 CFA francs (approx. US\$45-450), or one of these penalties. Ripping, destroying, degrading or offending emblems or coat of arms of foreign nations used at a public ceremony or flown publicly by an official representative of the nation at issue, accredited by the government of the Republic, is punishable by the same penalty.

**Art. 247:** Offending the President of the National Assembly, the President of the Economic and Social Council or the President of the Supreme Court, in the circumstances specified in Art. 174, is punishable by imprisonment of one month to two years and a fine of 200,000 to 2 million CFA francs (approx. US\$450-4,500).

**Art. 248:** Offending, in the exercise of their functions or because of the exercise thereof, a member of government, deputy, member of the Economic and Social Council or a magistrate of the Supreme Court, in the circumstances specified in Art. 174, is punishable by imprisonment of 15 days to two years and a fine of 100,000 to 1 million CFA francs (approx. US\$226-2,260).

**Art. 249:** Offending, in the circumstances specified in Art. 174, a judicial or administrative magistrate other than those covered by the preceding article, a juror or an assessor, in the exercise of their functions or because of the exercise thereof, is punishable by imprisonment of eight days to two years and a fine of 20,000 to 200,000 CFA francs (approx. US\$45-450).

**Art. 250:** If the insult defined in Arts. 247, 248 and 249 are committed during an official ceremony, an assembly or a court hearing, imprisonment shall range between one and three years. Arts. 117 and 118 do not apply.

**Art. 251:** Insult committed in the circumstances indicated in Art.174 and against any public officer in the sense of Art. 223\*, in the exercise of their functions or in connection with the exercise thereof, is punishable by imprisonment of 15 days to three months and a fine of 10,000 to 100,000 CFA francs (approx. US\$23-226), or one of these penalties.

**Art. 252:** Anyone who, in the circumstances indicated in Art. 174, looks to cast discredit on a judicial decision or act, in a manner that affronts the authority or independence of justice, will be punished by imprisonment of one to six months and a fine of 10,000 to 100,000 CFA francs (approx. US\$23-226), or one of these penalties. In addition, the judge may impose banishment on the guilty party.

**Art. 254:** If the infractions outlined in the present section are committed in the press, the second paragraph of Art. 173 applies.

*\*Art. 223 specifies that the term “public officer” includes all magistrates, state functionaries, public or ministerial officials, agents, officers in the armed forces, police officers, and anyone charged even occasionally with a public service or mission.*

## MAURITANIA

**Population: 3.3 million**

**Press Freedom Rating: Partly Free**



→ In late February, Hanevy Ould Dehah was released from prison after serving eight months under what had originally been a six-month sentence. Dehah, news director of the site Taqadoumy, was convicted of “violating public decency” after a presidential candidate claimed that an article Dehah published about the candidate’s lavish expenditures was “defamatory and baseless.” Dehah was acquitted of “defamation,” “inciting rebellion” and “inciting crimes and offenses.” After serving more than his full sentence, Dehah was eventually released with more than 100 other prisoners in a pardon for the Prophet Muhammed’s birthday.

### Relevant Laws

#### Penal Code (1983)

**Art. 204:** criminalizes insulting administrative and judicial magistrates or jurors in the exercise of their functions. Whether by words, writing, drawings not rendered public, insults that undermine the honor of such individuals are punishable by imprisonment of 15 days to two years. If expressed during a court session, the penalty is increased to imprisonment of two to five years.

**Art. 205:** specifies that insults committed in the same set of circumstances, but communicated by gestures, threats or throwing objects, are punishable by imprisonment of one to six months, or, where committed during a court session, by imprisonment of one month to two years.

**Art. 206:** prohibits insults by any means against all ministerial officers or agents, or citizens charged with public duties, during the exercise thereof. Such insults are punishable by imprisonment of 10 days to one month, and a fine of 5,000 to 30,000 ouguiya (approx. US\$19-115), or only one of these penalties.

**Art. 207:** provides that, any insult committed against a police commander is punishable by imprisonment of 15 days to three months, and may also be punished by a fine of 5,000 30,000 ouguiya (approx. US\$19-115).

**Art. 208:** criminalizes publicly casting discredit on a judicial decision, by acts words or writings, in a manner as to undermine the authority or independence of a judicial authority. It is punishable by imprisonment of one to six months, and a fine of 5,000 to 200,000 ouguiya (approx. US\$19-760), or one of these penalties. Where committed by the press, the punishments outlined in Art. 263 apply.

**Art. 263:** imposes a punishment of imprisonment of one month to two years and a fine of 5,000 to 150,000 ouguiya (approx. US\$19-570) on anyone who creates or holds, for purposes of dealing, distributing, renting or displaying; imports or causes to be imported, displayed or transported for the same purpose; displays or projects in public, sells, rents or sells or leases; offers, even at no cost or not in public, in any form whatsoever, directly or indirectly; distributes or submits for distribution by any means, any prints, writings, drawings, posters, engravings, paintings, photographs, films, stencils, emblems or other immoral objects or images. Anyone convicted under this section may also be prohibited, for up to six months, from carrying out managerial functions at businesses that publish, print and distribute journals and periodicals.

**Art. 267:** addresses recidivism, specifying that, where someone is convicted under Arts. 263 to 266 and within five years commits another infraction, they are subject to double the prison term set in Art. 263, and a fine of up to 600,000 ouguiya (approx. US\$2,280). A prohibition on exercising the functions specified in Art. 263 also applies; the relevant court may reduce this to no less than six months.

**Art. 306:** Any person who commits an offense against public decency or Islamic morals, or violates holy places or assists in their violation, and if this act does not figure in crimes subject to *Ghissassi* or *Diya* [restitution paid to the victim of a crime or the victim's family], is punishable by imprisonment of three months to two years and a fine of 5,000 to 60,000 ouguiya (approx. US\$19-228). This section also prohibits apostasy, punishable by death in case there is no repentance.

**Art. 348:** Anyone who, by any means whatsoever, makes a false accusation against one or more individuals, to judicial or police, or any other authority with power to act thereon, or to superiors or employers of the individual, shall be

punished by imprisonment of six months to five years and a fine of 10,000 to 200,000 ouguiya (approx. US\$38-760).

**Art. 349:** All other insults or outrageous expression that are not both serious and public give rise only to less serious penalties (*peines de simple police*), or sentences imposed by magistrate or police courts.

**NIGER****Population: 15.8 million****Press Freedom Rating: Partly Free**

After President Mamadou Tandja was overthrown in a military coup, the new government was quick to reopen the state-funded press club, closed since 2008. This paved the way for significant reform. In June, legislation was adopted decriminalizing libel.

Further cause for hope was the appointment of prominent journalist, Abdourahamane Ousmane, to head the new National Communication Observatory, the media oversight body created following the coup. It replaced the Higher Communication Council formed under Tandja, and often used for aggressive pursuit of the news media.



## RWANDA

**Population: 10 million**

**Press Freedom Rating: Not Free**

Media freedom was further repressed in the run-up to August 2010 elections, with government officials stepping up lawsuits and setting administrative traps against independent newspapers. Many reporters went into exile. Just before incumbent President Paul Kagame won a second term in a landslide victory, the BBC quoted him: “Those who give our country a bad image can take a rope and hang themselves.”



→ In July, *Umurabyo* editor Agnes Uwimana was charged with “incitement to civil disobedience,” “contempt of head of state,” “spreading rumors to cause public disorder,” and “denying the genocide.” Her reporter, Saidati Mukakibibi was charged a week later with “criminal defamation,” “inciting public disorder,” and “divisionism.” All charges stem from articles in 2010. Uwimana faced a possible 33-year prison sentence. The prosecution sought a 12-year sentence for Mukakibibi. *Umurabyo* ceased publication.

→ In April, *Umuwugizi* was closed by the Media High Council -- Rwanda’s regulatory body -- for six months for “inciting public disorder” and “contempt of head of state.” Editor Jean Bosco Gasasira fled Rwanda after reported death threats. Gasasira believed the charges were brought for an article comparing Rwanda’s President to Zimbabwe’s President Mugabe. In September, Gasasira was acquitted, but a higher court reversed the ruling, and Gasasira faced a 10-year term upon return to the country.

→ In February, three journalists from *Umuseso* were convicted of “violation of privacy” for an article alleging an illicit affair between a top government official and the mayor of Kigali. Didas Gasana, deputy editor, Richard Kayigamba, reporter and Charles Kabonero, the editor living in exile, appealed and were free pending trial. A month later, a 2008 criminal defamation conviction against Kabonero and Gasana went on appeal but was dismissed. The charges stemmed from an article about Rwandan investor Tilbert Rujugiro, wanted for fraud in South

Africa. Both journalists received one-year suspended sentences and were fined \$1,686 each.

### **Relevant Laws**

The Press Law of 2002 was replaced by a new Media Law in 2009. The old law outlawed defamation and insult, including against the head of state, and called for application of maximum penalties under the Penal Code. The 2009 Media Law also penalizes offenses such as contempt of the head of state, and still permits prosecution of journalists under the Penal Code.

### **Penal Code**

**Art. 187:** Anyone who publicly insults one of the individuals specified in the preceding article\* shall be punished by prison for three months to three years and a maximum fine of 5,000 francs (approx. US\$9), or one of these penalties.

**Art. 188:** Anyone who removes, destroys, damages, defaces or insults a hoisted or publicly displayed flag or insignia of a foreign state, shall be punished by imprisonment of three months to two years and a maximum fine of 2,000 francs (under US\$5), or one of these penalties.

**Art. 234:** Insulting by words, gestures, threats, writings or drawings, a member of the assembly with legislative powers, in the exercise of his mandate or in connection with the exercise thereof, a minister or a judicial or administrative magistrate, an agent of authority or the police, or any other person charged by a ministry with a public service, in the exercise of their functions or in connection therewith, is punishable by prison for one month to one year and a fine of 200 to 5,000 francs (under US\$1-9), or one of these penalties. If the insult is in a legislative assembly, or a hearing before a court, the penalties are doubled. Insult against the head of state is punishable by prison for two to five years and a fine of 2,000 to 10,000 francs (under US\$5-18), or one of these penalties.

**Art. 241:** Publicly and maliciously removing, destroying, damaging, replacing or insulting the flag or the official insignia of the Republic shall be punished by imprisonment of two months to five years and a fine of 5,000 to 20,000 francs (approx. US\$9-36), or one of these penalties.

**Art. 391:** Maliciously and publicly imputing a specific fact to a person, which is of a nature to affect the honor of, or esteem of, the person, or exposes the person to public scorn, is punishable by imprisonment of eight days to one year and a fine of 1,000 to 10,000 francs (approx. US\$2-18), or one of these penalties.

**Art. 392:** Publicly insulting a person is punishable by imprisonment of eight days to two months and a fine not exceeding 5,000 francs (approx. US\$9), or one of these penalties.

**Art. 393:** Whoever expresses, by public defamation or insult, aversion or hatred against a group of people who belong, by their origin, to a particular race, religion, or commits an act of a nature to provoke such aversion or hatred, shall be punished by imprisonment of one month to one year and a fine not exceeding 5,000 francs (approx. US\$9), or one of these penalties. [The article bans other offenses over ethnicity, race, religion or nationality.]

**Art. 394:** A slanderous accusation, by any means whatsoever, is punishable by imprisonment of six months to three years and a fine of 1,000 to 20,000 francs (approx. US\$2-36), or one of these penalties, if made to:

1. a judicial or administrative authority, or public officers with the authority to act thereon;
2. supervisors or employers of the denounced person.

**Art. 395:** Defamation or insult of a person in circumstances not addressed in the preceding articles is punishable by imprisonment of a maximum of eight days and a maximum fine of 1,000 francs (approx. US\$2), or one of these penalties.

*\*Art. 186 refers to foreign heads of state, members of foreign governments, representatives, officers or officials of another state or intergovernmental organizations, or a family member of any of these while in Rwanda.*

## SENEGAL

**Population: 12.8 million**

**Press Freedom Rating: Partly Free**

→A leading journalist and two fellow reporters were convicted of libel and fined \$30,000. They were also given one-month suspended sentences. Abdou Latif Coulibaly, editor of the weekly *La Gazette*, and reporters Aliou Niane and Alioune Badara Coulibaly, alleged in a 2007 article that a Sudan cell phone company, Sudatel, paid officials \$40 million in kickbacks for a license. The case was highly publicized. Opposition parties and non-government organizations staged a “parallel trial” on Coulibaly’s case. Meanwhile, defamation charges against Coulibaly by the National Lottery were dismissed in 2008, but in July 2010, the Lottery sued him again, and he was convicted of receiving stolen documents. The plaintiff sought \$1 million damages.



→The editor of *Express News*, Abdourahmane Diallo, was convicted in absentia for defaming the President’s chief of staff. Diallo was sentenced to six months in prison and 18 months suspended. His paper was fined \$30,000. The case was over an article quoting negative comments on the chief of staff by ruling party members.

### Relevant Laws

#### Penal Code

**Art. 254:** Offense to the President of the Republic by one of the means listed in Art. 248 [public communications, including writings and printed materials] is punishable by imprisonment of six months to two years and/or a fine of 100,000 to 1.5 million CFA francs (approx. US\$218-3,260).

**Art. 255:** Publication, distribution, disclosure or reprinting by any means

whatever of false news, fabricated articles, falsified or falsely attributed to third parties, is punishable by imprisonment for one to three years and a fine of 100,000 to 1.5 million CFA francs (approx. US\$218-3,260) when the publication, distribution, disclosure or reprinting, whether or not done in bad faith. . . casts discredit on public institutions or their functioning. The same penalties will be incurred when the publication, distribution, disclosure or reprinting would have been likely to produce the same consequences.

**Art. 258:** Every allegation or imputation of a fact that undermines the dignity or esteem of the individual or body against whom the fact is imputed constitutes defamation. When it is done by one of the means cited in Art. 248, it is punishable even if it is expressed as a question or if it is aimed at a person or a body that is not explicitly named but whose identification is possible from the terms of the speech, cries, threats, writings or printed materials, placards or posters. Every gravely offensive statement, every term of scorn, whether it is related to the origin of a person or not, every invective that does not contain an imputation of a fact constitutes an insult.

**Art. 259:** Defamation committed by one of the means listed in Art. 248 against the courts and tribunals, the army and the public administrative units is punishable by four months to two years imprisonment and/or a fine of 200,000 to 1.5 million CFA francs (approx. US\$436-3,260).

**Art. 260:** Defamation by the same means and because of their functions or positions against one or more members of the government, one or more deputies of the National Assembly, a civil servant, a guardian or agent of public authority, a citizen permanently or temporarily assigned a public service or commission, a juror or witness because of his testimony is punishable by the same punishment. Defamation against the same persons concerning their private life is covered by the following article.

**Art. 261:** Defamation committed against private individuals by one of the means listed in Art. 248 is punishable by three months to two years

imprisonment and/or a fine of 100,000 to 1 million CFA francs (approx. US\$218-\$2,180). Defamation committed by the same means against a group of individuals not designated in the preceding article, but who by their origin belong to a race or an established religion, is punishable by two months to two years imprisonment and a fine of 50,000 to 500,000 CFA francs (approx. US\$109-\$1,090), where its purpose is to incite hatred among citizens or inhabitants.

**Art. 262:** Insult committed by the same means against bodies or individuals indicated in Arts. 259 and 260 is punishable by one to three months imprisonment and/or a fine of 20,000 to 100,000 CFA francs (approx. US\$44-\$218). Insult committed in the same manner against private individuals, when it was not preceded by provocation, is punishable by imprisonment for a maximum of two months and/or a fine of 20,000 to 100,000 CFA francs (approx. US\$44-\$218). If the insult has been committed against a group of individuals who belong by their origin to a race or to an established religion with the goal of inciting hatred among citizens or inhabitants, the maximum penalty will be imprisonment for six months and a fine of 500,000 CFA francs (approx. US\$1,090).

**Art. 263:** Arts. 260, 261 and 262 will be applicable to defamations and insults directed against the memory of the dead only in those cases where the authors of these defamations or insults intended to attack the honor or esteem of the living heirs, spouses or sole legatees. Whether or not the authors of the defamations or insults intended to attack the honor or esteem of living heirs, spouses or sole legatees, the latter will be entitled to use, in either case, the right of response.

**Art. 265:** Insult committed publicly against foreign Heads of State, heads of foreign government and the ministers of foreign governments is punishable by six months to two years imprisonment and/or a fine of 100,000 to 1.5 million CFA francs (approx. US\$218-3,260).

**Art. 266:** Grave offense committed publicly, while they are fulfilling their functions, against ambassadors and plenipotentiary ministers, envoys, charges d'affaires or other diplomatic representatives accredited by the Government of the Republic is punishable by three months to two years imprisonment and/or a fine of 100,000 to 1 million CFA francs (approx. US\$218-2,180).

## **SIERRA LEONE**

**Population: 5.7 million**

**Press Freedom Status: Partly Free**

There were positive strides toward press freedom. A freedom of information act was well-received by Parliament, and was referred to a committee for review. But defamation and seditious libel were still criminal offenses, despite significant lobbying by media organizations to amend the law.



### **Relevant Laws**

#### **The Public Order Act of 1965**

**Sect. 26 (False Defamatory Libel):** Any person who maliciously publishes any defamatory matter knowing the same to be false shall be guilty of an offense called libel and liable on conviction to imprisonment for any term not exceeding three years or to a fine not exceeding 1,000 leones\* or both.

**Sect. 27 (Defamatory Libel):** Any person who maliciously publishes any defamatory matter shall be guilty of an offense called libel and liable on conviction to a fine not exceeding 700 leones or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

**Sect. 28 (Plea of Truth):** 1. On the trial of an offense of libel against Sects. 26 or 27, the accused having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defense, unless it was for the public benefit that the said matters charged should be published; and to entitle the accused to give evidence of the truth of such matters charged as a defense to such charge it shall be necessary for the accused in pleading to the said charge, to allege in writing the truth of the said matters charged in the manner now required in pleading a fair comment and justification to an action for a defamation and further to allege in writing that it was for the public benefit that the said matters charged should be published and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof.

2. Where the alleged libel contains several charges, and the accused fails in proof of the truth of any one of the matters alleged in it, or where the alleged libel is general and the accused fails to prove so much of the plea under this section as would justify the libel, the Court shall find the accused guilty, and it shall be competent for the Court, in pronouncing sentence, to consider whether the guilty of the accused is aggravated or mitigated by the said plea, and by the evidence given to prove or disprove the same.
3. The matter charged in the alleged libel complained of by such charge shall be presumed to be false, and the truth thereof shall in no case be inquired into in the absence of such plea as mentioned in Subsection 1.
4. In addition to such plea it shall be competent to the defendant to plead a plea of not guilty.
5. Subject to the provisions of this section, nothing in this Part contained shall take away or prejudice any defense under the plea of not guilty which is now competent to the defendant to make under such plea to any charge brought under Sects. 26 or 27.

**Sect. 31 (Protection of Innocent Sellers):** The sale by any person of any book, pamphlet, or other printed or written matter or, of any number or part of any periodical is not a publication thereof for the purposes of this Part, unless such person knows that such book pamphlet or written matter, or number or part, contains defamatory matter; or, in the case of any part or number of any periodical that such periodical habitually contains defamatory matter.

- Sect. 32 (Publication of False News):** 1. Any person who publishes any false statement, rumor or report which is likely to cause fear or alarm, to the public or to disturb the public peace shall be guilty of an offense and liable on conviction to a fine not exceeding 300 leones or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.
2. Any person who publishes any false statement, rumor or report which is calculated to bring into disrepute any person who holds an office under the Constitution, in the discharge of his duties shall be guilty of an offense and liable on conviction to a fine not exceeding 500 leones or to imprisonment not exceeding two years or both.
  3. Any person who publishes any false statement, rumor or report which is likely to injure the credit or reputation of Sierra Leone or the Government shall be guilty of

an offense and liable on conviction to a fine not exceeding 300 leones or to imprisonment for a term not exceeding 12 months or both.

4. This section shall not apply to any defamatory matter exempted under the provisions of Sect. 30.

5. It is no defense to a charge under this section that the person charged did not know or did not have reason to believe that the statement, rumor or report was false, unless he proves that before he communicated such statement, rumor or report, he took reasonable measures to verify the accuracy of this statement, rumor, or report.

1. Any person who:

a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or

b) utters any seditious words; or

c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

d) imports any seditious publication, unless he has no reason to believe that it is seditious, shall be guilty of an offense and liable for a first offense to imprisonment for a term not exceeding three years, or to a fine not exceeding 1,000 leones or to both such imprisonment and fine, and for a subsequent offense shall be imprisoned for a term not exceeding seven years, and every such seditious publication shall be forfeited to the Government.

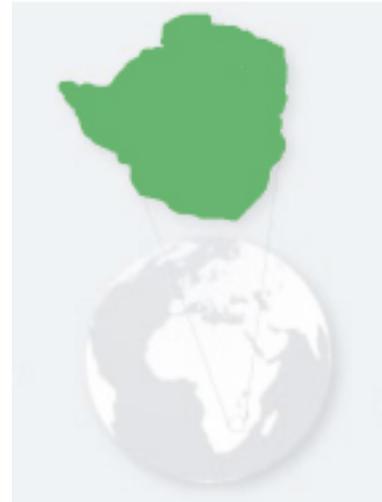
*\* Monetary penalties under these sections all amount to less than US\$1, which is inconsistent with the fines levied on journalists in recent years. However, the legislation does not appear to have been formally amended.*

## ZIMBABWE

**Population: 12.6 million**

**Press Freedom Rating: Not Free**

→ Three days after an article appeared in November alleging election fraud, *Standard* reporter Nquobani Ndlovu was charged with criminal defamation. Interrogators wanted to know the story's source. It alleged that officials masterminded police recruitment to insure a loyal force ahead of elections. Ndlovu was released on \$100 bail. The government appealed his release, but lost. Ndlovu awaited trial at year's end. Nevanji Madanhire, Ndlovu's editor, was charged with criminal defamation in the same case.



→ An arrest warrant was issued for Wilf Mbanga, publisher of *The Zimbabwean*, for a 2008 article alleging a Zimbabwe Electoral Commission official was assassinated. Mbanga was charged with publishing material “prejudicial to the state.” *The Zimbabwean* is edited in Britain and Mbanga lives in London. Mbanga said the story never appeared in his paper.

→ In September, an arrest warrant was issued for Harare Mayor Muchadeyi Masunda after he failed to appear in court. Along with eight council members, Masunda was charged with criminal defamation of businessman Philip Chiyangwa. The case stemmed from an alleged leak, placing Chiyangwa at the center of a major land selling scam. Five journalists were also subpoenaed: Vincent Kahlya, editor of *Zimbabwe Independent*; Nevanji Madanhire, editor of the *Standard*; *Standard* reporters Feluna Nieya and Jennifer Dube; and freelancer Stanley Gama. Charges were dropped in November.

### Relevant Laws

The Public Order and Security Act (2002) previously criminalized publishing inaccurate information, information prejudicial to the State, and insulting the President. According to the Public Order and Security Amendment Act (2007), these provisions have been repealed since the offenses are included in the Criminal Law (Codification and Reform) Act.

**Criminal Law (Codification and Reform) Act (effective July 2006)**

**Art. 31:** Publishing or Communicating False Statements Prejudicial to the State: This article imposes liability on anyone, inside or outside Zimbabwe, who publishes or communicates a wholly or materially false statement, with the intention or realizing there is a “real risk or possibility” of undermining public confidence in a law enforcement agency, the prison service or the defense forces of Zimbabwe, regardless of whether it actually undermines that confidence.

Similarly, regardless of intent or awareness of consequences, this article imposes liability on anyone who publishes or communicates a wholly or materially false statement that undermines public confidence in the agencies specified above, if the person knows the statement to be false, or does not have reasonable grounds for believing it to be true.

Offenders are considered guilty of “publishing or communicating a false statement prejudicial to the State” and liable to a fine up to or exceeding level 14\* (Z\$5 million) imprisonment for up to 20 years, or both.

**Art. 33:** Undermining Authority of or Insulting President: This Article prohibits public, intentional statements about the President or an acting President “with the knowledge or realizing that there is a real risk or possibility that the statement is false” and that it “may” engender feelings of hostility toward, or cause hatred, contempt or ridicule of the President or an acting President, or the President’s office. The law specifies that “statements” include acts or gestures. It also criminalizes “abusive, indecent or obscene” statements about the President or the President’s office. Persons convicted of such offenses are guilty of “undermining the authority of or insulting the President,” and subject to penalties consisting of a fine up to level 6\* (Z\$400,000), imprisonment for up to one year, or both.

**Art. 95:** Criminal insult: This article provides that any person who, by words or conduct, “seriously impairs the dignity” of another person, is guilty of criminal insult, if the offender intended to impair the other’s dignity, or realized there was “a real risk or possibility” that this would occur. It must be proven that the plaintiff actually felt insulted or degraded as a result. In case of conviction, the

offender is liable to a fine up to level 6\* (Z\$400,000), imprisonment for up to one year, or both.

**Art. 96: Criminal Defamation:** This article prohibits publishing statements, with the intent to harm another's reputation, and knowing they are false or realizing there is "a real risk or possibility" that they are false. It is sufficient for the published statement to "create a real risk or possibility of causing harm" to the other's reputation. Offenders are subject to a fine up to level 14\* (Z\$5 million), imprisonment for up to two years, or both.

This article further specifies that a court may consider several factors to decide whether the statement at issue is "sufficiently serious" to constitute a crime, including the extent to which the accused has persisted with allegations in the statement, the extravagance of any allegations in the statement, the nature and extent of publication of the statement, whether and to what extent the interests of the State or any community have been detrimentally affected by the publication.

**Art. 177 Undermining of police authority:** This article prohibits false statements with the intention, or realizing there is a risk or possibility, of engendering "feelings of hostility," "contempt, ridicule or disesteem" toward a police officer or the police force. Offenders are subject to a fine up to level 7\* (Z\$800,000), imprisonment of up to two years, or both.

*\*These fines are specified in a schedule attached to the Act. Given the redenomination (and inflationary volatility) of Zimbabwe's currency in February 2009, it is unclear what amounts would actually be imposed.*

<b>Argentina</b>	<b>Cuba</b>	<b>Peru</b>
<b>Brazil</b>	<b>Ecuador</b>	<b>Uruguay</b>
<b>Colombia</b>	<b>Mexico</b>	<b>Venezuela</b>

## **OVERVIEW OF LATIN AMERICA/CARIBBEAN**

New media laws came into force in many Latin American countries in 2010, some quite controversial.

In Argentina, defamation was decriminalized in a new media law package, but critics noted that a media council to administer it consisted of political appointees.

A Social Responsibility media law in Venezuela was amended to include language broadening insult. Opponents said its terms could be used against the press.

There was a sharp decline in press freedom in Mexico as drug lords increased attacks on reporters. As a result, Freedom House lowered Mexico's press freedom rating to "Not Free." Yet, Mexico made small but important strides on defamation. The State of Veracruz started to decriminalize the offense, raising hopes that other states would follow.

Lawmakers in Ecuador debated a new media law that critics warned would restrict press freedom. Meanwhile, the same government that routinely filed charges of "insult," "slander," "libel" and "defamation," launched a campaign of its own of TV ads against the media, calling reporters "untrustworthy," "liars," etc.

-- *P,McC.*



## ARGENTINA

**Population: 40.6 million**

**Press Freedom Rating: Partly Free**

Amendments to the press law decriminalizing defamation, libel and slander went into effect in 2010. The World Press Freedom Committee applauded the changes, although took issue with some of the reforms, including Art. 111, which “preserves the antiquated legal concept that imposes the burden of proof on the defendant.” Despite the reforms, the government still limited press freedom. Part of the new law allowed for the creation of a politically appointed media regulatory council with full authority to interpret and implement the code. By the end of 2010, the council had not yet formed.

→ In August, an appellate court overturned a 2008 decision by a lower court finding Google and Yahoo guilty of defamation. The case was brought by Argentine entertainer Virginia Da Cunha, who claimed moral damages after her image and name were used in connection with a sexually explicit web site without her consent.

In its new ruling, the appellate court said: “ The mere possibility that a [defendant] search engine produces search results from third party sites that yield offensive and scandalous information about an individual, which may cause injury or damage to that person’s image or reputation, does not by itself mean that said individual has a right to seek damages directly against the search engines.”

### Relevant Laws

#### Penal Code

**Art. 109** now provides that defamation or falsely accusing a particular person of committing a specific crime that is grounds for a public trial, shall be punished by a fine from 3,000 to 30,000 Argentine pesos (approx. US\$780-7,800). It also specifies that under no circumstances shall expressions relating to matters of public interest constitute defamation.

**Art. 110** now specifies that anyone who intentionally dishonors or discredits someone else shall be sanctioned with a fine of 1,500-20,000 Argentine pesos

(approx. US\$390-5,180). It also specifies that under no circumstances shall expressions relating to matters of public interest constitute insults to honor.

**Art. 111** provides that a defendant, in cases where the expressions are in no way related to matters of public interest, may only prove the truth of the accusations at issue in the following cases:

1. If the fact attributed to the offended person should have led to a penal trial;
2. If the plaintiff were to request proof of the accusations directed at him. In these cases, if the truth of the accusations is proved, the defendant would be exempt from punishment.

**Art. 113** provides that anyone who publishes or reproduces, by any means, the offensive statements at issue made by another person, will be punished as the author of the material. However, this is only the case if the content was not substantially accurately attributed to the relevant source. This section also now specifies that under no circumstances will expressions relating to matters of public interest constitute a crime.

**Art. 114:** When the libel or slander has been spread in the capital and national territories through the press, its authors shall be subject to the sanctions of this code and the judge or court shall order, as requested by the accuser, that the editors insert in their respective printed matter or newspapers, at the expense of the guilty party, the text of the sentence or a repudiation.

**Art. 115:** Defamation professed by the civil parties, in briefs, speeches or reports produced before the courts and not publicized, shall be subject only to corresponding disciplinary corrections.

**Art. 116:** When defamation is reciprocal, the court may, according to the circumstances, declare both or one of the parties exempt from sanction.

**Art. 117** provides that someone guilty of insult or defamation is exempt from punishment if he or she publicly recants, either before answering the complaint or in the act of doing so. It now also notes that retraction does not signify the accused has conceded guilt.



## **BRAZIL**

**Population: 195.4 million**

**Press Freedom Rating: Partly Free**

Despite reforms of the press law enacted in 2009, the government continued to suppress free speech. In September 2010, a state court barred 84 publications from reporting on an investigation of a regional governor and his re-election campaign. The ban was later lifted, but it was one of many cases of harassment and threats to reporters by authorities, many of which involved charges of libel and defamation.

→ At the end of the year, blogger Carlos Santos faced 30 charges and nine arrest orders -- all defamation suits filed against him by politicians. Santos had already been convicted three times of defamation and acquitted in three other cases.

→ In May, Franco-Spanish filmmaker Jose Huerta was presented several lawsuits, including one charge of “criminal defamation” over a documentary he made about the environmental impact of a mass tourism project being carried out in Brazil by an Austrian investment group.

→ In November, a Brazilian court dismissed charges of “defamation” and “libel” leveled against US journalist Joe Sharkey. The civil suit was filed after Sharkey blamed the Brazilian air traffic control for a plane crash that he survived, but which killed 154 other persons. The plaintiff was a widow of a passenger who perished. Sharkey faced a fine of nearly \$280,000.

### **Relevant Laws**

#### **Penal Code**

**Art. 138:** Calumny, defined as falsely imputing the commission of a crime to someone, is punishable by six months to two years in prison, and a fine.

**Art. 139:** Defaming someone by imputing to him a fact offensive to his reputation is punishable by three months to one year in prison, and a fine.

**Art. 140:** Insulting someone's dignity or decorum is punishable by one to six months in prison or a fine. Where the insult refers to race, ethnicity, religion, place of origin, advanced age or disability, the punishment ranges from one to three years in prison and a fine.

**Art. 141:** The penalties stipulated in this chapter are increased by one third, where the crimes are committed:

1. against the President of the Republic, or a foreign head of state;
2. against a public official, by reason of his carrying out his duties;
3. in the presence of several persons, or via a medium facilitating the dissemination of calumny, defamation or insult;
4. against a person more than 60 years old or a disabled person, except in the case of insult.

**Art. 331:** Insulting a public official in the exercise of his duties or as a result of them is punishable by a fine or six months to two years in prison.

## COLOMBIA

**Population: 46.3 million**

**Press Freedom Rating: Partly Free**

Attacks by armed groups made the country dangerous for journalists. Throughout 2010, 175 reporters were part of the government's protection program, and the Interior Ministry sponsored an emergency alert network to enhance journalists' safety. But government officials were nonetheless also a serious threat to reporters, many of whom were dogged by insult and defamation suits.



→ Eight reporters were sued by Gov. Raúl Flórez for articles they wrote for *Violeta Stéreo* and *La voz de Yopal* newspapers about a government investigation of Flórez. The governor accused the group of “insult” and “defamation,” yet refused to exercise his right to reply.

→ By year's end, a longstanding case against Edinson Lucio Torres had still not been decided. Torres -- head of the local opposition Polo Democrático party and a frequent blogger and radio host -- was sued by a senator in 2006 for claiming the senator had links to paramilitary groups. Torres cited a national newspaper, the Ombudsman's office and a nongovernmental organization as his sources.

### Relevant Laws

#### Penal Code (Law 599 of 24 July 2000)

**Art. 220 (Insult):** A person who makes dishonorable imputations against another shall be punished by imprisonment from one to three years, and a fine of 10 to 1,000 times the legal monthly minimum wage.

**Art. 221 (Malicious Representation/Calumny):** A person who falsely imputes to another conduct that is, under law, considered a crime, shall be punished by imprisonment of one to four years and a fine of 10 to 1,000 times the legal monthly minimum wage.

**Art. 222 (Indirect Insult and Malicious Representation)** provides that those who publish, reproduce or repeat another's insult and malicious representations are subject to the penalties prescribed in the preceding articles.

**Art. 223 (Circumstances Affecting Penalty Severity)** specifies that, when the offenses prohibited in this section are committed via social media or other means of collective disclosure, or at a public gathering, the applicable penalties are increased by one sixth to one half. When committed in a letter directed solely to the victim or only in that person's presence, the applicable penalties are reduced as much as half.

**Art. 224 (Exemption from Liability)** provides that those accused of the offenses above are exempt from liability if they prove the truth of their imputations. It adds that this exemption does not apply in two situations:

1. in cases where the imputation concerns punishable conduct for which the person has been acquitted, or regarding which an investigation or proceedings were terminated (except where this occurs because of the statute of limitations)\*;
2. the imputation involves conduct relating to a person's sexual life, marital or family life, or crimes against freedom or sexual formation.

**Art. 225 (Retractions)** provides that an offender will not be held liable if he or she voluntarily retracts the statements in question, before a judgment in the first instance has been issued, if the retraction is published at the cost of the responsible party, and in the same media and with the same characteristics as the imputation at issue. No criminal action may be initiated if the retraction or correction is publicly made before the victim files a complaint.

*\*As noted, the Constitutional Court in 2009 declared this provision unconstitutional.*

## CUBA

**Population: 11.2 million**

**Press Freedom Rating: Not Free**

→ Independent reporter Calixto Ramón Martínez Arias was arrested in May while covering a memorial for dissident Orlando Zapata Tamayo, who died in prison. Arias was charged with “aggravated insult” and later charged with assaulting a police officer, although no eyewitnesses could confirm an attack. Arias was released pending trial, but picked up again in June for covering a dissident demonstration.



→ Juan Carlos Reyes Ocaña, a journalist for news agency Holguín Press, was arrested and charged on several counts, including “insult.”

### Relevant Laws

#### Penal Code

**Art. 144.1** prohibits insulting, defaming or otherwise offending, verbally or in writing, the dignity or decorum of a public authority or official, or their agents or assistants, in the exercise of their functions or because of the exercise thereof.

*Desacato* – contempt -- is punishable by imprisonment of three months to one year or a fine.

When the offense targets the President of the State Council or of the National Assembly, members of the State Council or the Council of Ministers, or National Assembly deputies, the penalty is imprisonment for one to three years.

**Art. 204** provides that anyone who publicly defames, denigrates or belittles the institutions of the Republic, political organizations, the country’s masses, the nation’s heroes and martyrs, shall be punished by imprisonment of three months to one year or a fine.

**Art. 318** defines defamation as imputing to another, before third parties, dishonorable conduct, deeds or characteristics that may damage their reputation,

lower their social standing or the public's opinion, or expose them to losing the trust required for their employment, profession or social function. The offense is punishable by imprisonment of three months to one year or a fine.

**Art. 319** prohibits calumny, defined as knowingly disseminating false facts that discredit another person. It is punishable by imprisonment of six months to two years or a fine. If the defendant acknowledges, in court, the falsity of the claims, the penalty may be reduced.

**Art. 320** provides that anyone who purposely, in writing or with words, via drawings, gestures or acts, offends another's honor, shall be punished by imprisonment of three months to one year or a fine.

## ECUADOR

**Population: 13.7 million**

**Press Freedom Rating: Partly Free**



A divisive communications bill was debated in Parliament in late 2010. Experts believe its vague language would further restrict freedom of speech. The government, meanwhile, continued to crack down on media. President Rafael Correa encouraged citizens to sue journalists, and the government sponsored an anti-press ad campaign, including TV slogans like “nobody believes them,” calling media “ignorant,” “corrupt” and “deceitful.”

→ In March, *El Universo* columnist Emilio Palacio was sentenced to three years prison and fined \$10,000 over a “criminal libel” charge by Camilo Semán, head of the government National Finance Corporation. The World Press Freedom Committee protested the long sentence. Semán dropped charges in June.

→ *Diario La Hora* correspondent Juan Alcívar hid for nearly a month after being sued by officials in September. They accused him of “terrorist aggression” and using media to “insult” and spread “hatred” of a mayor. Alcivar was jailed. City officials alleged he threw a teargas bomb at the President in July. Other media said he was just covering a Correa visit. Alcivar faced a \$200,000 fine.

→ Journalist Freddy Aponte’s bank account was frozen for not paying \$54,633 in “moral damage” in a 2009 suit by Loja Mayor Bolívar Castillo. Aponte declared bankruptcy. Of some \$20,000 seized, more than \$4,500 was his personal assets, and \$15,000 a bank loan. The mayor sued Aponte in 2007 for calling him a thief.

### Relevant Laws

#### Penal Code

Changes to the Penal Code were enacted in March, but none altered existing provisions on calumny, insult and defamation.

**Art. 489** specifies that calumny is the false accusation of a crime, and that insult is any other expression made to discredit, dishonor or disparage another person, or any other action carried out for the same purpose.

**Art. 490** distinguishes serious and minor insults. Serious ones include imputations of a vice or moral fault that can considerably prejudice the victim's reputation, credit or interests, while minor insults are defined as attributing to others deeds, nicknames or physical defects that do not compromise the victim's honor.

**Art. 491** provides that calumny is punishable by prison for six months to two years and a fine if committed at a meeting or public place, or in presence of more than 10 persons; by means of writings, printed or not, fixed images or emblems, distributed or sold, offered for sale or exposed to public view, or, where non-published writings are involved, if sent or communicated to others, including letters.

**Art. 492** states that those who make calumnious statements privately or in the presence of fewer than 10 persons, are subject to punishment of one to six months in prison and a fine.

**Art. 493** provides that calumny of authorities is punishable by one to three years in prison and a fine; and that insults of authorities that do not qualify as calumny but are serious are punishable by prison of six months to two years and a fine.

**Art. 495** provides that a person guilty of grave but non-calumnious insult, by word or deed, in writing, imaging technique or emblem, in any of the circumstances specified in Art. 491 is punishable by prison for three to six months and a fine; and, as outlined in Art. 492, by imprisonment of up to three months and a fine.

**Art. 501** provides that those guilty of any kind of insult, not covered by the previous articles, by damaging another's reputation, through communication with several persons, or individually, will be punished as perpetrators of defamation. The applicable penalty consists of three months to one year of prison and a fine.



## **MEXICO**

**Population: 110.6 million**

**Press Freedom Rating: Not Free**

Conditions deteriorated rapidly for journalists. Freedom House reported that Mexico experienced the sharpest drop in press freedom, as drug lords threatened and killed reporters in increasing numbers. Freedom House lowered its ranking from Partly Free to Not Free.

Defamation, though no longer a federal offense, was still criminalized in many Mexican states. But the state of Veracruz was hailed by human rights groups for moving to pass legislation to decriminalize it.

"The approval of the bill to decriminalize defamation by consensus is a breakthrough in persuading the Mexican Government to comply with Human Rights Committee recommendations," said Article 19 Executive Director Agnes Callamard, in a statement.

→ Lydia Cacho was named World Press Freedom Hero at the International Press Institute's World Congress in September. A well-known social activist, author and journalist, Cacho's investigative journalism has often landed her in hot water with the authorities. She was acquitted in 2007 on criminal defamation charges in a 2005 case in which she alleged a businessman was part of a child pornography ring. She was illegally detained, and it later emerged that high-ranking persons -- including a former attorney general, a government minister and police officials -- orchestrated her arrest by falsifying documents. In 2009, Mexico's National Human Rights Commission investigated Cacho's detention and determined that her accusations of torture were true. She continued to receive threats and faced harassment throughout 2010. In May, armed gunmen stormed Cacho's center for abused women and threatened her staff.

### **Relevant Laws**

Defamation and insult were decriminalized at the federal level and removed from the Federal Penal Code in 2007. State governments were required to follow suit, but this had not yet happened in a large number of states.

According to the Article 19 organization, as of 2009, 21 Mexican states continue to criminalize defamation: Baja California, Baja California Sur, Campeche, Coahuila, Colima, Durango, Guanajuato, Hidalgo, State of México, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, San Luis Potosí, Sonora, Tabasco, Tlaxcala, Veracruz, Yucatán and Zacatecas.

In the State of Baja California Sur, for example, Art. 342 of the state's Penal Code imposes prison sentences of up to six years for defamation. In Tabasco, Art. 166 of the state Penal Code provides that defamation is punishable by six months to three years in prison. Other states have made considerable progress. In Chiapas, for example, penalties for defamation were increased in 2004, but the offense was removed from the Penal Code in 2007.



## PERU

**Population: 29.4 million**

**Press Freedom Rating: Partly Free**

→In June 2010, the Supreme Court overturned a decision by a lower court, in which journalist Alejandro Carrascal Carrasco was convicted of “aggravated defamation” and sentenced to a year in jail. Carrasco, editor of *Nor Oriente*, was released after six months. The case stems from several articles by Carrasco in 2005, alleging corruption in local educational institutions.

→Also in June, radio reporter Oswaldo Pereyra Moreno was convicted of “criminal defamation” and sentenced to a year in prison and fined \$3,500. Moreno was host of Radio Macarena’s “*Hora 13*.” In 2009, he aired a show about an illegal abortion given to a 14-year-old girl at a pharmacy. The girl was unnamed, but her stepfather was, prompting him to file charges against Moreno.

→Peruvian blogger Jose Alejandro Godoy was handed a stiff sentence in October for articles on his web site *Desde el Tercer Piso* (From the Third Floor) alleging government corruption. Godoy got a three-year suspended sentence, 120 days of community service, and ordered to pay damages of more than \$100,000. Media NGOs were outraged by the ruling. Freedom House issued a statement, saying that “such criminalization is incompatible with the obligations to protect freedom of expression” in the American Human Rights Convention.

### Penal Code

Peru abolished the crime of *desacato* (previously prohibited by Art. 374, which imposed prison sentences for offense of public officials) in May 2003, at least partly thanks to pressure from the Inter-American Human Rights Commission. Insult, calumny and defamation remain criminal offenses. Art. 130 provides that anyone who offends or insults another person with words, gestures or actions, shall be punished with community service of 10 to 40 days or with a fine.

**Art. 131** specifies that anyone who falsely attributes a crime to another person shall be punished with a fine.

**Art. 132** prohibits defamation, defined as attributing to a person a deed, quality or conduct that can prejudice the person's honor or reputation, in front of several persons, together or separately, but in a manner that permits the news to be spread. The applicable penalty consists of imprisonment up to two years and a fine. Where the defamatory communication refers to the offense outlined in Art. 131, the applicable penalty consists of imprisonment between one and two years and a fine. Where the offense is committed in a book, the press or any other communication medium, the penalty consists of imprisonment of one to three years and a fine.

**Art. 133** outlines several acts that do not qualify as insult or defamation, including statements made in the context of legal proceedings, literary, artistic or scientific critiques, or commentaries or information that contain unfavorable opinions about a public official in the performance of his or her duties.

## URUGUAY

**Population: 3.4 million**

**Press Freedom Rating: Free**



→Although Uruguay decriminalized defamation and libel in 2009, a public prosecutor nonetheless called for a two year prison sentence against journalist Alvaro Alfonso in August 2010, alleging he libeled a former Congressman in his book “Secrets of the Communist Party.” The prosecutor also demanded seizure of all copies of the book, published in 2008. Robert Rivard, Chairman of the Inter American Press Association’s Press Freedom Committee, said he was surprised "that there are still public prosecutors calling for journalists to be sent to jail, when in June last year a law was enacted which made defamation and libel no longer criminal offenses when what is referred to are matters of public interest and public personages, as is evident in this case."

→The “actual malice” law enacted in 2009 went into force in July, when an appeals court overturned a decision by a lower court on a defamation charge against a reporter. In March 2010, *Tres Puntos* editor Ricardo Morales was convicted of libeling a deputy police officer in reporting on police involvement in drug smuggling. The decision by the higher court, based on the new legislation, ruled: “The potential harm of public statements against a public official concerning his or her work in themselves cannot curtail press freedom; such freedom would not exist if the press were to be inhibited from publishing news affecting the reputation of a public official.”

→In February, Channel 10 reporters Ignacio Alvarez and Gabriel Pereira were ordered to pay \$5,000 damages to a judge after conviction for causing her “moral harm.” The case was over a 2005 report titled “The Other Side of Child Abuse.” The court claimed it used “improper” words in reviewing a case tried by the judge.

### Relevant Laws

#### Penal Code

**Art. 138**, that previously outlawed crimes against the life, physical integrity, liberty or honor of foreign heads of state or their diplomatic representatives, no

longer contains language forbidding insults to honor. The old law imposed prison sentences of two to nine years for such offenses.

**Art. 173**, which prohibits insult of public authorities, now applies only where the authority of public officials is damaged by way of “real offenses executed in the presence of the official or in the place where the official carries out his or her functions,” or by way of “open disobedience to the legitimate mandate of a public official.” It no longer specifies that “shouting offensive gestures” qualifies as insult, and instead notes that nobody shall be punished for expressing disagreement with an authority’s mandate.

**Art. 336**, which previously outlined narrow circumstances in which truth could be asserted as a defense to defamation and slander charges, now states that defendants shall be exempt from liability where their expression covers matters of public interest, involving both public officials and public persons who, because of their profession or activity, enjoy a social relevancy, or any person who has chosen to be involved in public affairs. The exemption does not apply when it is proven that there was actual malice in insulting a person or violating a person’s privacy.

**Art. 333** provides that anyone who attributes a certain fact to a person that, if true, could give rise to legal or disciplinary proceedings against him or expose him to public hatred or contempt, shall be punished with four months to three years of imprisonment, or a fine.

**Art. 334** provides that anyone who, beyond the cases envisioned in the preceding article, offends in any way by word of mouth, in writing or by deed the honor, rectitude or decorum of a person, shall be punished with three to 18 months of imprisonment, or a fine.

**Art. 335** specifies that the above crimes are regarded as more serious, with a consequent increase in penalties, if they are committed in public documents, in writings, drawings or paintings disseminated publicly or exposed to the public.



## VENEZUELA

**Population: 29 million**

**Press Freedom Rating: Not Free**

At the end of the year, lawmakers expanded the Social Responsibility broadcast law to include the Internet. The controversial amendment also added language that banned information that “incites hatred, foments anxiety,” or disrespects authorities.”

→In November 2010, charges against journalist Francisco Perez were dropped. He had been convicted of “criminal defamation” in June and barred from working as a reporter for nearly four years. He was also fined \$21,000. Charges were brought against Perez for his article in *El Carabobeño*, accusing the mayor Valencia of nepotism.

→Guillermo Zuloaga, president of private TV network Globovision, was arrested in March and charged with “spreading false news” based on remarks he made about the President. Two months later, he was rearrested with his son on trumped up charges related to a car dealership he owned. He fled to the United States.

### Relevant Laws

#### Penal Code (2005)

**Art. 147** penalizes offending, in writing, speech, or by any other means, the President of the Republic (or whoever is fulfilling the President’s duties). The punishment consists of imprisonment of six to 30 months if the offense is considered serious, and of three to 15 months if considered minor. When the offense is committed in public, the penalty is increased by one third.

**Art. 148** penalizes the same offense against the Vice President, any of the Supreme Court justices, a Cabinet Minister, state governor, National Assembly deputy, the metropolitan mayor, National Electoral Council rector, the Ombudsman or Attorney General, the Comptroller General, or any members of the Military High Command. The applicable penalties are half of those specified in the preceding article, and one third when mayors are targeted.

**Art. 442** specifies that anyone who, communicating with others, accuses another person of a specific act that exposes the person to public contempt or hatred, or offends his honor or reputation, shall be punished with imprisonment of one to three years and a fine. If committed in a public document or in writings, in drawings displayed or released to the public, or by other means or forms of publicity, the penalty ranges from two to four years' imprisonment and a fine.

**Art. 444** prohibits offending the honor, reputation or dignity of another person in communications with other people. The offense is punishable by imprisonment of six months to one year, and a fine. When the offense is committed in the presence of the offended person, even if that person is alone, or by way of any written media that the offender has directed, or in a public place, the penalty may be increased by one third. It may be increased by one half if the offended party is present when the communication receives publicity. When the offense is committed by the means specified in Art. 442, the applicable penalty consists of imprisonment of one to two years and a fine.

**Art. 445** provides that the offense outlined in Art. 444 will be punished by 15 to 45 days' imprisonment where it targets any person lawfully charged with a public service, in that person's presence and by reason of his or her public service. Where publicity is involved, the penalty may range from one to two months' imprisonment.

**Afghanistan**  
**Cambodia**  
**China**  
**Fiji**

**India**  
**Indonesia**  
**Malaysia**  
**Pakistan**

**Singapore**  
**Thailand**  
**Vietnam**

## **OVERVIEW OF ASIA/PACIFIC**

Much of the region remained intent on gaining control over the blogosphere, which along with social media platforms, continued its meteoric rise.

Vietnam came down hard on bloggers, and went so far as to aid hackers in launching cyberattacks. In China, three bloggers were sentenced to jail, after their online support for a woman who alleged her daughter had been gang raped and killed by police associates, but whose appeals to authorities were ignored.

In many countries, though, it was still the traditional media that were the main targets. In Indonesia, eight newspapers together had to fight a multimillion dollar suit against them by a citizen who objected to how he was characterized in an article on illegal gambling. And in Afghanistan, a private TV station was shut for “endangering national unity.”

Some crackdowns came new media laws. In Fiji, a highly criticized media decree was issued, giving weighty authority to a media tribunal. In Pakistan, amendments threatened further restrictions for defamation and provided for very large fines.

In Thailand, however, some relief came when an emergency decree that was in place part of the year was partially lifted. It prohibited media from “causing panic.”

-- *P. McC.*

## AFGHANISTAN

**Population: 29.1 million**

**Press Freedom Rating: Not Free**

Afghan media continued to be controlled and manipulated by the Taliban and regional warlords, as well as by influential citizens from surrounding countries.



In April, former journalist Dr. Ahmed Ghous Zalmi received a presidential pardon, along with mullah Qari Mushtaq and Ateef Noori, a printer. The three were serving a 20-year prison sentence imposed on them in 2008, after they published the Koran into Dari/Farsi without including the original Arab text, a violation of Islamic law. Zalmi's wife and children sought refuge in Pakistan after being attacked because of her husband's crime.

→In July the government closed down private television station *Emroz* for "endangering national unity." It also banned two programs on other stations for being un-Islamic. *Emroz* is known for its anti-Iranian and anti-Shiite stances.

### Relevant Laws

Afghanistan's legal environment consists of a complex mix of sources of authority, including civil and penal codes, Islamic Sharia law, and tribal and customary law. The Constitution specifically provides that, where the Constitution or other laws do not address a given situation, courts shall adjudicate matters under *Hanafi* jurisprudence -- one of Sunni Islam's four schools of jurisprudence.

### Mass Media Law

The law has been repeatedly amended. The latest draft amendments were approved by the Parliament in May 2007 but vetoed by President Hamid Karzai that December. By September 2008, Parliament voted to override the veto. But, according to the State Department, the amendments had not yet been enacted as of late 2009. If enforced, they would impose additional restrictions on content, including a prohibition on propagating religions other than Islam.

**Art. 31** of the current version of the law prohibits mass media publication of subjects “contrary to principles of Islam and offensive to other religions and sects,” or that “lead to dishonoring and defamation of individuals.”

### **Penal Code of 1976**

**Art. 241** prohibits publicly insulting the Afghan nation, flag or state symbol. The offense is subject to prison terms of one to five years.

**Art. 242** specifies that insulting the President is punishable by one to five years in prison. When the insult is in the President’s presence, the applicable prison penalty ranges from five to 15 years.

**Art. 243** prohibits insulting foreign heads of state and official representatives of foreign states in connection with their duties. The offense is punishable by imprisonment of 24 hours to one year or a fine.

**Art. 246** imposes imprisonment of three months to one year, a fine, or both, for insulting the Grand Assembly, Parliament, government, the armed forces, courts or other state authorities.

**Arts. 248 and 294** both prohibit publicly insulting public officials in connection with or during the performance of their duties. The offense is punishable by imprisonment of three to six months, a fine, or both.

**Art. 346** defines defamation as the public “attribution of a certain incidence to someone else,” which, if true, would “degrade” the person in the eyes of the people. The applicable punishment consists of imprisonment from one to two years, a fine, or both.

## CAMBODIA

**Population: 15 million**

**Press Freedom Rating: Not Free**



→In April, the editor of Khmer opposition daily *Machas Srok* was released after 10 months of a 12-month term. Hang Chakra was convicted in 2009 for “disinformation” and “dishonoring public officials.” Both charges were over articles alleging government corruption. The editor was tried under the UNTAC (UN Transitional Authority in Cambodia) criminal code, not the Press Law of 1995, which provides no prison terms and imposes lower fines.

→In June, the Supreme Court upheld a lower court finding former Women’s Affairs Minister Mu Sochua guilty of defamation. In 2009, Sochua filed defamation charges against the prime minister for a comment he made about her in a speech she deemed derogatory. Sochua was stripped of parliamentary immunity, and the prime minister counter-sued, alleging her suit against him and her comments on it defamed him. Sochua refused to pay a \$4,000 fine ordered by the court, whereupon the National Assembly voted to garnish her salary.

→Opposition leader Sam Rainsy was charged in March with “disinformation” and falsifying documents by Phnom Penh Municipal Court. The charges were over maps Rainsy used at a public forum on border markers with Vietnam. Rainsy, who was in self-imposed exile in France, was convicted in absentia, sentenced to 10 years in jail and fined \$15,330. In another case, a French appeals court upheld a 2009 defamation conviction of Rainsy filed by Foreign Minister Hor Namhong. He was fined \$2,650 in that case.

### Relevant Laws

#### Penal Code

The National Assembly adopted a new Penal Code in 2009. In a draft published by the Article 19 organization, the new Penal Code criminalizes defamation and insult but abolishes prison terms for some violations.

**Art. 305: Public Defamation:** Any allegation or slanderous charge that undermines the honor or reputation of a person or an institution constitutes defamation. Defamation by one of the following means is punishable by a fine of 100,000-10 million riel (approx. US\$24-2,400):

1. in speeches, by any means whatever, announced in a public place or in a public meeting;
2. in writing or sketches by any means whatever, circulated in public or exposed to the view of the public;
3. by any means of audiovisual communication intended for the public.

**Art. 306: Defamation in Media:** Defamation committed in the media is subject to the press law.

**Art. 307: Public Insult:** Any insulting expression, scornful term or other verbal abuse that does not amount to a slanderous charge constitutes an insult. Insult by one of the following means is punishable by a fine of 100,000- 10 million riel (approx. US\$24-2,400):

1. in speeches, by any means whatever, announced in a public place or in a public meeting;
2. in writing or sketches by any means whatever, circulated in public or exposed to public view;
3. by any means of audiovisual communication intended for the public.

**Arts. 308, 446: Insult in Media:** Insult in the media is subject to the press law.

**Art. 445: Insulting the King:** Insulting the King entails prison of one to six months, and a fine of 100,000-10 million riel (approx. US\$24-2,400), when committed:

1. in speeches, of any kind whatever, pronounced in a public place or in any public meeting;
2. in writing or sketches, of any kind whatever, distributed in public or exposed to public view.

**Art. 447: Additional Penalties: Categories and Duration:** For the offenses in the present Chapter, the following additional penalties may be pronounced:

1. deprivation of certain civil rights, definitively or for not more than five years;

2. prohibition against pursuing a profession ..., definitively or for not more than five years;
3. prohibition against taking residency for not more than 10 years;
4. prohibition against leaving the territory of the Kingdom of Cambodia for not more than five years;
5. for a convicted foreigner, prohibition against entering or taking residency in the territory of the Kingdom of Cambodia definitively or for not more than five years;
6. confiscation of any instruments, materials or any objects used to commit the offense or that were intended to commit the offense;
7. prohibition against possessing or carrying a weapon, definitively or for not more than five years;
8. posting the decision imposing the sentence for not more than two months;
9. publication of the decision imposing the sentence in the newspapers;
10. broadcasting the decision imposing the sentence by all means of audiovisual communication for not more than eight days.

**Art. 511: Elements of Insult and Penalties to be Imposed:** The use of words, gestures, writings, sketches or objects that undermine the dignity of a person constitutes an insult. Insult of a civil servant or a citizen entrusted with a public mandate by election into office or during the occasion of performing his/her function is punishable by imprisonment ranging from one day to six days and a fine of 1,000 riel-100,000 riel (approx. US\$0.24-\$24).

**Art. 529: Insulting a Judge:** Insult, as specified in Art. 511 of this Code, against a judge in office or during the exercise of his/her functions, is punishable by imprisonment from six days to one month and a fine from 10,000-100,000 riel (approx. US\$2-24). If such insult is committed in a court hearing, it is punishable by imprisonment ranging from one month to three months and a fine of 100,000-500,000 riel (approx. US\$24-120).

### **1995 Press Law**

**Art. 10:** If any person believes that any article or text, even if the meaning of the article or text is implied, or any picture, drawing or photograph in any publication is false and harms his/her honor or dignity, that person has the right to demand a retraction from or the right to reply to the publisher of the statement and the right to sue on charges of defamation, libel, or humiliation that harms his/her honor or

dignity. A retraction or reply shall be published within seven days or in the next issue after receiving a demand of retraction or reply.

In the case of a public figure, any false allegations or imputations which the journalist publishes or reproduces with malicious intent against such public figure is defamation and is prohibited. If in following a complaint by a plaintiff in a civil action the court determines that any publication is false, it may then order the press outlet to publish a retraction, pay compensation, or publish a retraction and pay compensation. A retraction that the press outlet has been obliged to publish shall be on the same page and with the same size of type as the text believed to have affected the honor or dignity of the person who demands the retraction.

The court may also impose a fine of 1 million-5 million riel (approx. US\$240-1,200). In addition, in cases in which a judgment is made under the above paragraph the court may order the posting of its decision at specified locations and the publication of its judgment in one or more newspapers at the expense of the accused, not to exceed a maximum of 1 million riel (approx. US\$240).

In all cases, the owner, the editor and journalist shall be jointly liable for payment of damages to the victims.

**Art. 13:** The press shall not publish or reproduce false information that humiliates or subjects to contempt national institutions. Such publication may be penalized by a fine of 2 million-10 million riel (approx. US\$480-2,400).

**Art. 14:** This article forbids publishing “anything that may affect the good customs of society,” including “degrading pictures that compare particular human beings to animals.” Violations are punishable by a fine of 1 million to 5 million riel (approx. US\$240-1,200).



## CHINA

**Population: 1.35 billion**

**Press Freedom Rating: Not Free**

Chinese journalists operate under standing threat from authorities, who do not hesitate to imprison or harass. Many journalists are readily prosecuted on trumped up and erroneous charges. Defamation, insult and libel are often charged against the media.

→ In April 2010, three bloggers were sentenced to prison. Fan Yangjong was sentenced to two years, and You Jingyou and Wu Huaying were each given one-year sentences. All were charged with “defamation” after they took up the cause of a mother demanding that her daughter’s death be investigated by the police. The mother alleged her daughter was gang-raped by acquaintances of the police and died as a result. The bloggers posted information about the case.

→ *Economic Observer* reporter Qiu Ziming’s arrest for “libel” was withdrawn, but not before he was placed on a national “Most Wanted” list. The journalist published a series of investigative articles that detailed theft of state funds and insider trading at a battery company. Immediately after his arrest, he went into hiding for several days.

### Relevant Laws

#### Constitution (1982)

**Art. 38 (Freedom from insult):** The personal dignity of citizens of the People’s Republic of China is inviolable. Insult, libel, false accusation or false incrimination directed against citizens by any means is prohibited.

#### Penal Code

**Art. 105: (...)** Whoever instigates the subversion of the political power of the State and overthrow the socialist system by spreading rumors, slandering, or other ways are to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights; the ringleaders and those whose crimes are grave are to be sentenced to not less than five years of fixed-term imprisonment.

**Art. 246:** Those openly insulting others using violence or other methods or those fabricating stories to defame others, if the case is serious, are to be sentenced to three years or less in prison, put under criminal detention or surveillance, or deprived of their political rights. Those committing crimes mentioned above are to be investigated only if they are sued, with the exception of cases that seriously undermine social order or the state's interests.

**Art. 250:** Persons directly responsible for publishing materials that discriminate against or insult minority nationalities, if the case is serious and results in grave consequences, are to be sentenced to three years or less in prison, or put under criminal detention or surveillance.

**Art. 299:** Whoever purposely insults the national flag, national emblem of the PRC in a public place with such methods as burning, destroying, scribbling, soiling, and trampling is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, control or deprived of political rights.

**FIJI****Population: 854,100****Press Freedom Rating: Partly Free**

A clampdown on journalists became considerably stronger after a new media decree was rushed through in June 2010. The new law gives broad powers to a media tribunal that is free impose long jail terms and hefty fines on reporters. It is not obliged to hear evidence.



Media NGOs and human rights watchdogs objected to the new provisions, which forbade publishing information “against the national interest,” “offends good taste or decency” or “creates community discord.” Amnesty International said passage of the decree was “widely considered a sham” since it was not debated and was swept into law within hours.

**Relevant Laws**

Fiji’s Penal Code was updated in 2009 and defines sedition as: “an intention to bring into hatred or contempt, or to excite disaffection against the government of Fiji” ... “to promote feelings of ill-will and hostility between different classes.” Sedition is punishable by up to seven years in prison. It can apply if a person “utters any seditious words, prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication or imports any seditious publication, unless he has no reason to believe that it is seditious.”

An Interim Public Emergency Regulations was replaced by a **Media Industry Development Decree 2010**

**Art. 3** Establishes the Media Industry Development Authority.

**Art. 4** The Authority consists of a chairperson and five other members, appointed by the Minister.

**Art. 8 Function of the Authority:** (d). To ensure that nothing is included in the content of any media service which is against public interest or order, or national

interest, or which offends against good taste or decency and creates communal discord.

**Art. 9 Powers of the Authority:** a) conduct research and investigations necessary for the improvement and development of media  
b) develop and monitor codes of practice relating to content or technical standards.

**Art. 23 Bylines:** The content of any print media which is in excess of 50 words must include a byline and wherever practical, the content of any other media service must include a byline.

**Art. 24 Offenses relating to content regulation:** A breach of any of the provisions in or under Sects. 22 and 23 by a media organization shall constitute an offense and the media organization shall be liable on summary conviction to a fine not exceeding \$100,000. In the case of a publisher or editor, the fine will not exceed \$25,000, or term of imprisonment not exceeding two years, or both.

## INDIA

**Population: 1.2 billion**

**Press Freedom Rating: Partly Free**



→The Supreme Court upheld a 2007 Bombay High Court decision to lift a ban on US Prof. James Laine’s controversial book on a 17<sup>th</sup> Century king. A week after the decision, lawmakers in Maharashtra state announced they would consider legislation to forbid "defamation of national, historical or community icons." “Shivaji: Hindu King in Islamic India” was heavily criticized when published in 2003. A ban on the book was enforced in 2004 after unrest in Maharashtra.

Although the ban was lifted, the Oxford University Press promised to print no more copies in India. The publisher said Laine had signed an affidavit that he would remove “controversial references” from future publications.

→Sedition charges remained against *Sambad* journalist Laxmann Choudhury, who in 2009 was alleged to be linked to a packet of Maoist leaflets found on a bus. He was apparently targeted for investigating ties between police and organized crime.

→In July, *Crime* magazine editor T.P. Nandakumar was arrested in Kerala and charged with “defamation” for an article alleging corruption. After the article ran in the print edition, Nandakumar was under an injunction not to publish further material against the plaintiff. When the print article appeared on the magazine’s online site, Nandakumar was arrested and detained but released on bail.

### Relevant Laws

In 2006, the Supreme Court noted the growing tendency to file unjustified criminal defamation charges to obtain quicker or more favorable settlements, particularly in business circles “There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement,” it said in a 2006 ruling on *Indian Oil Corp. v. NEPC*.

**Penal Code**

**Art. 124A (Sedition):** Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

**Art. 295A (Deliberate and malicious acts, intended to outrage religious feelings or any class by insulting its religion or religious beliefs):** Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished by up to three years imprisonment and/or a fine.

**Art. 298 (Uttering, words, etc., with deliberate intent to wound the religious feelings of any person):** Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Art. 499 (Defamation):** Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

**Art. 500 (Punishment for defamation):** Whoever defames another shall be punished by up to two years imprisonment and/or a fine.

**Art. 501 (Printing or engraving matter known to be defamatory):** Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished by up to two years imprisonment and/or a fine.

**Art. 502 (Sale of printed or engraved substance containing defamatory matter):** Whoever sells or offers for sale any printed or engraved substances containing defamatory matter, knowing that it contains such matter, shall be punished by up to two years imprisonment and/or a fine.

**Prevention of Insults to National Honor Act of 1971 (as amended, 2005)**

**Sect. 2 (Insult to Indian National Flag and Constitution of India):**

Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

The law provides that repeat offenders shall be punished by imprisonment of no less than one year.



## INDONESIA

**Population: 232 million**

**Press Freedom Status: Partly Free**

→ Eight newspapers faced a multimillion dollar civil defamation suit in May. It was filed by citizen Raymond Teddy, after the papers reported his arrest in a 2008 police raid on an illegal gambling operation and called him the “boss of the gamblers.”

→ *Trans 7* correspondent Andi Wilianto Siahaan was charged with “criminal defamation” for arguing with a local election official over his right to take pictures while voting was under way.

### Relevant Laws

Over the preceding three years, Indonesia’s Supreme Court abolished as unconstitutional several insult provisions: Arts. 134, 135 and 136 (insulting the President or Vice President) and Arts. 154 and 155 (prohibiting public declarations of “feelings of hostility, hatred or contempt” toward the government and broadcasting such feelings). However, a number of provisions remain with criminal penalties for insult and defamation.

### Penal Code

**Art. 142:** Deliberate insult to a ruling king or another head of a friendly state shall be punished by a maximum imprisonment of five years or a maximum fine of 300 rupiahs.\*

**Art. 142a:** Any person who violates the national flag of a friendly state shall be punished by a maximum imprisonment of four years or a maximum fine of 3,000 rupiahs.

**Art. 143:** Intentional insult against a representative of a foreign power to the Indonesian Government in his capacity, shall be punished by a maximum imprisonment of five years or a maximum fine of 300 rupiahs.

**Art. 144:** 1. Any person who disseminates, openly demonstrates or puts up a writing or portrait containing an insult against a ruling king or another head of a friendly state or against a representative of a foreign power to the Indonesian Government in his capacity, with intent to make the insulting content public or to enhance the publicity thereof, shall be punished by a maximum imprisonment of nine months or a maximum fine of 300 rupiahs.

2. If the offender commits the crime in his profession and during the commission of the crime, two years have not yet elapsed since an earlier conviction on account of a similar crime has become final, he may be deprived of the exercise of said profession.

**Art. 207:** Any person who with deliberate intent in public, orally or in writing, insults an authority or a public body set up in Indonesia, shall be punished by a maximum imprisonment of one year and six months or a maximum fine of 300 rupiahs.

**Art. 208:** 1. Any person who disseminates, openly demonstrates or puts up a writing or portrait containing an insult against an authority or public body set up in Indonesia with intent to give publicity to the insulting content or to enhance the publicity thereof, shall be punished by a maximum imprisonment of four months or a maximum fine of 300 rupiahs.

2. If the offender commits the crime in his profession and during the commission of the crime two years have not yet elapsed since an earlier conviction of the person by reason of a similar crime has become final, he may be deprived of the exercise of said profession.

**Art. 310:** 1. The person who intentionally harms someone's honor or reputation by charging him with a certain matter, with the obvious intent to give publicity thereof, shall, being guilty of defamation, be punished by a maximum imprisonment of nine months or a maximum fine of 300 rupiahs;

2. If this takes place by means of writing or portraits disseminated, openly demonstrated or put up, the principal shall, being guilty of libel, be punished with a maximum imprisonment of one year and four months or a maximum fine of 300 rupiahs.

**Art. 311:** Any person who commits the crime of slander or libel in case proof of the truth of the charged fact is permitted, shall if he does not procure said proof and the charge has been made against his better judgment, being guilty of calumny, be punished by a maximum imprisonment of four years.

**Art. 312:** Proof of the truth of the charged fact shall only be permissible in the following cases:

1. if the judge deems the examination of the truth necessary to judge the allegation of the accused that he has acted in the general interest or for his necessary defense;
2. if an official is charged with the commission of an act in the exercise of his office.

**Art. 313:** The proof referred to in Art. 312 shall not be permissible if the charged fact cannot be presented except upon complaint and no complaint has been made.

**Art. 314:** If the defamed person has been declared guilty of the charged fact by judicial verdict that has become final punishment by reason of calumny shall be excluded.

If the defamed person has been acquitted of the charged fact, by judicial verdict that has become final, said verdict shall be considered as perfect proof of the untruth of the fact.

If proof against the defamed person by reason of the fact charged to him, a criminal prosecution has been initiated the prosecution by reason of calumny shall be suspended until the verdict on the charged fact has become final.

**Art. 315:** A defamation committed with deliberate intent which does not bear the character of slander or libel, against a person either in public, orally or in writing, or in his presence orally or by battery, or by a writing delivered or handed over, shall as simple defamation, be punished, by a maximum imprisonment of four months and two weeks or a maximum fine of 300 rupiahs.

**Art. 316:** The punishments laid down in the foregoing articles of this chapter may be enhanced by one third, if the defamation is committed against an official during or on the subject of the legal exercise of his office.

**Art. 317:** Any person who with deliberate intent submits or causes to submit a false charge or information in writing against a certain person to the authorities, whereby the honor or reputation of said person is harmed, shall, being guilty of calumnious charge, be punished by a maximum imprisonment of four years. Deprivation of the right mentioned in Art. 35 first to thirdly [these cover: the right to hold office/specific offices; the right to serve with the armed forces; and the right to vote or be voted for in elections] may be pronounced.

**Art. 318:** 1. Any person who with deliberate intent by some act falsely cast suspicion upon another person of having committed a punishable act, shall, being guilty of calumnious insinuation, be punished by a maximum imprisonment of four years.  
2. Deprivation of the rights mentioned in Art. 35 first to thirdly may be pronounced.

**Art. 319:** Defamation, punishable under this chapter, shall not be prosecuted except on complaint by the person against whom the crime has been committed, except in the case of Art. 316.

**Art. 320:** 1. Any person who in respect of a deceased person commits an act that, if the person would still be alive, would have been characterized as libel or slander, shall be punished by a maximum imprisonment of four months and two weeks or a maximum fine of 300 rupiahs.  
2. This crime shall not be prosecuted than upon complaint by either one of the blood relatives or persons allied by marriage to the deceased in the straight line or sideline to the second degree, or by the spouse. ...

**Art. 321:** 1. Any person who disseminates, demonstrates openly or puts up a writing or portrait of defamatory or for a deceased -- slanderous contents with intent to give publicity to the defamatory or slanderous contents or to enhance the publicity thereof, shall be punished by a maximum imprisonment of one month and two weeks or a maximum fine of 300 rupiahs.  
2. If the offender commits the crime in his profession and during the commission of the crime two years have not yet elapsed since an earlier conviction of the person by reason of a similar crime has become final, he may be deprived of the exercise of said profession.

3. This crime shall not be prosecuted except upon complaint by the persons indicated in Art. 310 and the second and third paragraph of Art. 320.

**Law No. 11/2008 on Electronic Information & Transactions**

**Art. 27 (3):** Anyone who intentionally and without the right to do so distributes and/or transmits and/or allows the accessing of electronic information and/or electronic documents that have defamatory content and/or slander reputation.

**Art. 45:** Anyone who satisfies the stipulations referred to in Art. 27 (1),(2), (3), or (4) shall be punished by up to six years' imprisonment and/or a maximum fine of 1 billion rupiahs (approx. US\$100,000).

*\*The fines specified in the Penal Code today equal less than US\$1. However, according to the Article 19 organization, the provisions of the civil law permitting civil defamation suits do not include any limitations on possible damages in such cases.*



## **MALAYSIA**

**Population: 27.9 million**

**Press Freedom Rating: Not Free**

The government was quick to use “sedition” to silence media. Several books were banned on that ground. Bloggers were also targeted, as were print, TV and radio journalists. By the end of 2019, lawmakers were considering a “cyber-sedition bill.”

→In June, a book by cartoonist Zulkifly Anwar Ulhaque, known as Zulnar, was banned as “unsuitable and detrimental to public order.” Two months later, Zulnar was arrested for “sedition” hours before launching a second book. He was bailed.

→In February, conservative NGOs protested an article in *The Star* newspaper in which Managing Editor P. Gunasegaran questioned the harsh punishment of three Muslim women accused of illicit sex. They were caned. The NGOs filed police reports, calling the article an “insult to Islam” and calling for Gunasegaran to be fired. The government issued a show-cause letter to the paper, which was forced to print an apology.

→Opposition Member of Parliament Karpal Singh was acquitted in June of the charge of “sedition” in a case over comments he made about the Sultan of Perak at a 2009 press conference.

→In September, Malay Mail editor Irwan Abdul Rahman was charged with publishing material considered “obscene, indecent, false, menacing or offensive in character with malicious intent.” Rahman, who edits the satirical blog, risked a \$1,600 fine and a year in jail. The charge was over an article in which Rahman wrote that the head of the electric company could sue the World Wildlife Fund for encouraging people to turn off their lights during the annual “Earth Hour.”

### **Relevant Laws**

#### **Penal Code**

**Section 499 (Defamation):** Whoever, by words either spoken or intended to be read or by signs, or by visible representations, makes or publishes any imputation

concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1 - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2 - It may amount to defamation to make an imputation concerning a company, or an association or collection of persons as such.

Explanation 3 - An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4 - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

**Sect. 500 (Punishment for Defamation):** Whoever defames another shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

**Sect. 501 (Printing or engraving matter known to be defamatory):** Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

**Sect. 502 (Sale of printed or engraved substance containing defamatory matter):** Whoever sells or offers for sale any printed or engraved substance, containing defamatory matter, knowing that it contains such matter, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

### **The Sedition Act (1948)**

Criminalizes any speech with a "seditious tendency." The concept is broadly defined to include tendencies that "bring into hatred or contempt or . . . Excite disaffection against any Ruler or against any Government" or the administration of

justice in Malaysia or in any State; those that “raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State”; “promote feelings of ill will and hostility between different races or classes of the population of Malaysia”; or “question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Arts. 152, 153 or 181 of the Federal Constitution.”

The law does provide that, “an act, speech, words, publication or other thing shall not be deemed to be seditious by reason only that it has a tendency . . . To show that any Ruler has been misled or mistaken in any of his measures.”

Those found guilty may be jailed for up to three years or fined 5,000 ringgit (approx. US\$1,400). In addition, newspapers containing seditious matter may be suspended by the court for up to one full year.

### **The Defamation Act (1957)**

Provides civil remedies for defamation. It has been used aggressively to sue almost every newspaper and TV station. Suits of up to 100 million ringgits (approx. US \$27 million) have been filed against the media.

**PAKISTAN****Population: 184.7 million****Press Freedom Rating: Not Free**

Reporters worked in harsh and dangerous conditions. Abductions and attacks becoming increasingly commonplace. But lawmakers were working to make an even tougher media environment by amending the law on the 2009 Pakistan Electronic Media Regulatory Authority to give make defamation law more restrictive.

The provision was ostensibly aimed at restricting media coverage of suicide bombings, but it would also make broadcast journalists vulnerable to defamation suits. They would be prevented from airing “anything defamatory against the organs of the State.” If convicted, they would be subject to a three-year prison terms and fines as high as nearly \$116,000.

**Pakistan Penal Code**

**Art. 124 (a) Sedition:** Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection toward, the Federal or Provincial Government established by law shall be punished with imprisonment for life to which fine may be added.

**Art. 503 Criminal Intimidation:** Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm ... commits criminal intimidation.

**Art. 504 Intentional insult with intent to provoke breach of the peace:** Whoever intentionally insults, and thereby provokes with the intention of breaking public peace, is subject to a fine, imprisonment up to two years, or both.

**Art. 505 Statements conducing to public mischief:** 1. Whoever makes, publishes, or circulates any statement, rumor or report  
 b) with intent to cause, or which is likely to cause, fear or alarm to the public; or  
 c) with intent to incite, or which is likely to incite, any class or community of persons, is subject to a fine and up to seven years in prison.

**Art. 506 Punishment for criminal intimidation:** Whoever commits the offense of criminal intimidation is subject to a fine, up to two years in prison, or both.

**Art. 507 Criminal intimidation by an anonymous communication:** Whoever commits the offense of criminal intimidation by anonymously, is subject to a prison sentence of up to two years.

### **Defamation Ordinance of 2002**

Any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form which injures the reputation of a person, tends to lower him in the estimation of others or tends to reduce him to ridicule, unjust criticism, dislike, contempt or hatred shall be actionable as defamation.

2. Defamation is of two forms, namely: -

- i) slander; and
- ii) libel.

3. Any false oral statement or representation that amounts to defamation shall be actionable as slander.

4. Any false written, documentary or visual statement or representation made either by ordinary form or expression or by electronic or other modern means or devices that amounts to defamation shall be actionable as libel.

Where defamation is proved, the defendant may be forced to offer an apology, as well as publish an apology in a place as prominent as the where the defamatory statement was made. Reasonable compensatory damages with a minimum of \$575, or three months imprisonment.

Where defamation is proved, the defendant may be forced to apologize, as well as publish an apology in a place as prominent as where the defamatory statement was made. Minimum damages: \$575; minimum prison term: three months.



## SINGAPORE

**Population: 4.8 million**

**Press Freedom Rating: Not Free**

The judiciary often leveled contempt of court charges against newspapers that published articles critical of the courts. As in previous years, Dow Jones' *Wall Street Journal Asia* was again charged with contempt, this time over a letter to the editor that suggested the judicial branch was controlled by the ruling People's Action Party. Although the *Wall Street Journal* also published two government rebuttals, the newspaper was still ordered to pay a fine and court costs of \$41,250.

It was not the only foreign newspaper targeted. *Finance Asia* and *The Economist* were also threatened with lawsuits, and the *International Herald Tribune* was forced to apologize for a February critical of the still-powerful former Prime Minister Lee Kuan Yew and his son. To avoid trial, the *IHT* paid the family \$114,000 damages. The family had already received a large settlement in 2009, when the since defunct *Far Eastern Economic Review* paid \$290,000 damages.

→ In November, 76-year-old British author Alan Shadrake was sentenced to six weeks in jail and fined \$15,400 for contempt of court and ordered to pay \$42,000 in court fees. Before trial, the author had to hand over his passport, as he was considered a flight risk. He was convicted of "scandalizing the court" in a book critical of the country's death penalty. Shadrake, who was released on bail, got the longest sentence the court has ever given for contempt.

### Relevant Laws

#### Penal Code

**Sect. 499 (Defamation):** "Whoever, by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

Possible penalties include imprisonment of up to two years and/or a fine. The explanatory notes accompanying the Penal Code note that defamation of a deceased person is possible, that an imputation “expressed ironically” may amount to defamation, and specify that “harm” will only be found where an imputation “lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

**Sedition Act**

The Sedition Act prohibits, among others, acts that have seditious tendency, the uttering of seditious words, as well as the publishing, sale or distribution of seditious publications. “Seditious tendency” is broadly defined to include a tendency to bring into hatred or contempt or to excite disaffection against the Government or the administration of justice, and to raise discontent or disaffection among the citizens or residents of Singapore. First-time offenders face a fine of up to 5,000 Singapore dollars (about US\$3,600), imprisonment of up to three years, or both.

**The Defamation Act (1957, 1997)** provides civil remedies for defamation.



## THAILAND

**Population: 68.1 million**

**Press Freedom Rating: Partly Free**

In late 2010, the government partly lifted an emergency decree imposed in April after political strife became violent. Bangkok and outlying provinces were no longer under emergency rule, but other regions remained so. The decree (Emergency Decree on Government Administration in States of Emergency) gave the government broad powers to restrict freedoms, including censorship and prohibiting media from “causing panic.”

Meanwhile, stringent *lèse majesté* provisions, outlawing insulting, defaming or threatening the royal family, continued in use to silence journalists and activists. In January, a government committee was assembled to advise police and ministry officials on how to apply the law more fairly.

→ Jonathan Head, the former BBC Bureau Chief in Bangkok, still had two *lèse majesté* charges pending in late 2010. The first case revolved around comments he made during a 2007 panel discussion at a Foreign Correspondents Club event. The second case was more generally related to his reporting during a two-year period. Both charges were for “damaging and insulting the reputation of the monarchy.”

→ In March, a Thailand-based American online journalist countersued after being charged with criminal defamation based on the *lèse majesté* provision.

Frank Anderson was sued by Akbar Khan, a British resident of Thailand, and Wattanasak Mungkitkarndee, a police official, over editorials Anderson wrote about them in 2008 and 2009 for his online journal, *The Korat Post*. The editorials argued the validity of the law, noting that the King had said he is not above criticism. Anderson’s countersuit, believed to be the first to challenge *lèse majesté*, accuses the plaintiffs of making false allegations to officials.

→ In September, the executive director of online news journal *Prachatai* was arrested for failing immediately to remove comments from the site deemed

“insulting to the monarchy.” Chiranuch Premchaiporn’s bail was set at \$6,500. She faced up to five years in prison if convicted.

### **Relevant Laws**

Laws protecting the reputation of the monarchy have a long tradition in Thailand, and have been enshrined in every version of its Constitution. The 2007 Constitution provides that the “King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action.”

*Lèse majesté* is an offense under the Penal Code, punishable by three to 15 years in prison. Thailand’s police chief also has the power to ban import of any publication deemed to contain *lèse majesté* or contrary to public order or good morals. Under Thai law, anyone may file a police complaint against someone he or she deems to have defamed the monarch or others in the royal family.

The Offenses Relating to Computers Act of 2007 addresses topics such as hacking and the distribution of pornography. Sect. 14 prohibits entering information into a computer system that constitutes an offense related to national security. It is punishable by up to five years in prison or a fine of up to 100,000 baht (approx. US\$3,000), or both. Sect. 20 permits authorities to seek court orders prohibiting distribution of information via a computer that could affect national security or contrary to public order or good morals. Since *lèse majesté* offenses are treated as national security violations, these provisions allow authorities to block sites deemed insulting to the monarchy. They have often been used against bloggers.

General defamation is also an offense under the Penal Code, punishable by up to one year in prison, a fine of up to 20,000 baht (approx. US\$600), or both. Since 1992, when the statement is published or broadcast to a wider audience, the maximum penalties are two years’ prison and a fine of 200,000 baht (approx. US\$6,000). For newspapers, liability is limited to the authors of texts, and editors and publishers are no longer liable for defamation by their reporters.

### **Penal Code**

**Sect. 112:** Whoever defames, insults or threatens the King, the Queen, the Heir Apparent or the Regent shall be punished with imprisonment of three to 15 years.

**Sect. 118:** Whoever commits any act against the flag or any other emblem symbolizing the State with the intent to deride the Nation shall be punished with imprisonment not exceeding two years or fined up to 4,000 baht (approx. US\$120) or both.

**Sect. 133:** Whoever defames, insults or threatens the Sovereign, his Queen or her Consort, the Heir Apparent or head of a foreign State shall be punished with imprisonment between one to seven years or a fine between 2,000 to 140,000 baht (approx. US\$60-4,100) or both.

**Sect. 134:** Whoever defames, insults or threatens a foreign representative accredited to the Royal Court shall be punished with imprisonment between six months to five years or a fine between 1,000 to 10,000 baht (approx. US\$30-300) or both.

**Sect. 135:** Whoever commits any act against the flag or other emblem symbolizing a friendly foreign State with intent to deride such State shall be punished with imprisonment not exceeding two years or a fine not exceeding 4,000 baht (approx. US\$120) or both.

**Sect. 136:** Whoever insults any official in the due exercise of his functions or by reason of the due exercise of his functions shall be punished with imprisonment not exceeding one year or a fine not exceeding 20,000 baht (approx. US\$600) or both.

**Sect. 198:** Whoever insults the court or the judge in a trial or adjudication of a case, or obstructs the trial or adjudication of the court, shall be punished with imprisonment of four to seven years or fined between 2,000 and 14,000 baht (approx. US\$60-420) or both.

**Sect. 326:** Whoever imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to hatred or contempt is said to commit defamation and shall be punished with imprisonment not exceeding one year or fined not exceeding 20,000 baht (approx. US\$600) or both.

**Sect. 327:** Whoever imputes anything to a deceased person before a third person, such imputation being likely to impair the reputation of the father, mother, spouse or child of the deceased or to expose such person to hatred or contempt, is said to commit defamation and shall be liable to the same punishment as provided in Sect. 326.

**Sect. 328:** If the offense of defamation is committed by means of publication of any document, drawing, painting, motion picture, picture, or letters made visible by any means, gramophone record or any other recording instruments, or by broadcasting or by propagation by any means, the offender shall be punished with imprisonment not exceeding two years or a fine not exceeding 200,000 baht (approx. US\$6,000).

**Sect. 329:** Whoever, in good faith, expresses any opinion or statement

1. by way of self-justification or defense, or for the protection of a legitimate interest;
2. in the status of an official in the exercise of his functions;
3. by way of fair comment on any person or thing subject to public criticism; or
4. by way of fair report of the open proceedings of any court or meeting, shall not be guilty of defamation.

**Sect. 330:** In the case of defamation, if the person prosecuted for defamation can prove that the imputation made by him is true, he shall not be punished. But he shall not be allowed to prove truth if such imputation concerns personal matters and such proof will not be of any interest to the public.

**Sect. 393:** Whoever insults another person in his presence shall be imprisoned for up to one month or fined up to 1,000 baht (approx. US\$30), or both.

## VIETNAM

**Population: 89 million**

**Press Freedom Rating: Not Free**

The government kept rigid control of the Internet. In 2010, it stepped up efforts to silence web-based media by supporting cyber attacks and launching a major crackdown on bloggers.

→ In January, a well-known lawyer for human rights activists and journalists was convicted of “spreading propaganda” and “offending” the prime minister. Le Cong Dinh was sentenced to five years in prison and subsequent three years’ house arrest. It was believed his arrest was retaliation for a libel suit by a group of lawyers against the prime minister.

→ Dissident writer Pham Thanh Nghien was sentenced to four years in prison and three years’ house arrest. She was arrested in 2008 and charged with “propaganda against the State” after protesting Vietnam’s position on island territories disputed with China. At trial, the charge turned to “defaming public officials” and over a 2007 article alleging stealing money meant for the widows of fishermen killed accidentally by the Chinese Navy. Three US Senators called for her acquittal.

### Relevant Laws

Regulations introduced in December 2008 prohibit blogs from covering or linking to content that opposes the State, undermines social order, reveals state secrets or undermines the honor and dignity of its citizens. Vietnamese Information Minister Do Quy Han reportedly said blogs must not deal with politics, religion or social issues. Since October 2008, the Administration Agency for Radio, Television and Electronics Information has monitored Internet content.

### Penal Code

**Art. 79 Carrying out activities aimed at overthrowing the people’s administration (subversion):** Those who carry out activities, establish or join organizations with the intent to overthrow the people’s administration shall be subject to the following penalties:



1. Organizers, instigators and active participants or those who cause serious consequences shall be sentenced to between 12 and 20 years of imprisonment, life imprisonment or capital punishment;
2. Other accomplices shall be subject to between five and 15 years of imprisonment.

**Art. 88 Conducting propaganda against the Socialist Republic of Vietnam:**

This article prohibits committing the following acts against the Socialist Republic of Vietnam:

- a) Propagating against, distorting and/or defaming the people's administration;
- b) Propagating psychological warfare and spreading fabricated news to foment confusion among people;
- c) Making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam. Penalties range from three to 20 years' imprisonment.

**Art. 122 Slander:** 1. Those who trump up or spread stories knowing them to be fabricated to infringe the honor or damage the legitimate rights and interests of other persons or fabricate claims of committed crimes against others and wrongly denounce them before the competent agencies shall be subject to warning, noncustodial reform for up to two years or a prison term ranging from three months to two years.

2. Where the crime is committed in one of the following circumstances, the offenders shall be sentenced to imprisonment ranging from one to seven years:

- a) In an organized manner;
- b) Abusing their positions and powers;
- c) Against more than one person;
- d) Against their own grandfathers, grandmothers, fathers, mothers or persons who teach, nurture, look after, educate and/or medically treat them;
- e) Against persons who are performing their official duties;
- f) Slandering other persons about committing very serious or particularly serious crimes.

3. Offenders may also be subjected to a fine ranging from 1 million to 10 million dong (about US\$54-540), a ban from holding certain posts, practicing certain occupations or carrying out certain jobs for one to five years.

**Art. 258 Abusing democratic freedoms to infringe the interests of the State, the legitimate rights and interests of organizations and/or citizens:**

1. Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe the interests of the State, the legitimate rights and interests of organizations and/or citizens, shall be subject to warning, non-custodial reform for up to three years or a prison term ranging from six months to three years.
2. Where the offense is committed in serious circumstances, the offenders shall be sentenced to imprisonment ranging from two to seven years.

**Art. 276 Affronting the national flag or national emblem:** Those who deliberately affront the national flag and/or the national emblem shall be subject to warning, non-custodial reform for up to three years or a prison term ranging from six months to three years.

**Art. 319 Insulting or assaulting commanders or superiors:**

1. Those who, in working relationships, seriously hurt the dignity and honor of or assault commanders or superiors, shall be subject to non-custodial reform for up to three years or a prison term ranging from three months to three years.
2. Where the commission of the crime causes serious, very serious or particularly serious consequences, the offenders shall be sentenced to imprisonment ranging from two years to seven years.

**Art. 329 Making false reports:**

1. Those who intentionally make false reports, causing serious consequences, shall be subject to non-custodial reform for up to three years or a prison term of three months to three years.
2. Where the commission of the crime causes very serious or particularly serious consequences, the offenders shall be sentenced to two to seven years of imprisonment.

**Decree No. 97/2008, Aug. 28, 2008, On the Management, Provision and Use of Internet Services and Electronic Information on the Internet**

**Art. 6. Prohibited Acts:**

1. Abusing the Internet for the purposes of:

- a) Opposing the State of the Socialist Republic of Vietnam, undermining national security and social order and safety; destroying the all-people great unity bloc; spreading propaganda on wars of aggression; sowing hatred and conflict between nations, ethnic groups and religions; spreading propaganda on and inciting violence, obscenity and debauchery, crime, social evils, superstition; and destroying national fine customs and traditions;
- b) Disclosing state secrets and military, security, economic, foreign relation and other secrets as prescribed by law ...

**Circular No. 07/2008 of Dec.13, 2008, Ministry of Information and Communication Guidelines Regarding Decree No. 97/2008, Aug. 28, 2008: Section 3. Prohibited acts in Art. 6, Decree No. 97 on the supply of information on blogs are specified as follows:** 3.1. Taking advantage of blogs for providing, transmitting or creating direct links to information that violates the provisions of Art. 6, Decree No. 97.

3.2. Creating blogs in the name of other individuals or organizations; illegally using blogs of other individuals; providing untrue information that infringes lawful rights and interests of other organizations and individuals.

3.3. Disseminating press, literary and art works and publications that violate the press and publication laws.

**Decree No. 51/2002 of April 26, 2002: Detailing the Implementation of the Press Law (Dec. 28, 1989) and the Law Amending and Supplementing a Number of Articles of the Press Law (June 12, 1999):**

**Art. 5** outlines matters not to be covered by the press. It provides that, under Art. 10 of the original press law, the following matters must not be published or broadcast:

- 1. Press, artistic or literary works or documents in contravention of law, with contents opposing the State of the Socialist Republic of Vietnam and undermining the entire people's unity bloc. ...
- 3. Photos without clear captions or which affect the concerned individuals' prestige or honor (except for photos giving information on public meetings or collective activities, working sessions, art performances, sports and physical training, wanted persons, open court hearings or defendants in serious cases who are serving court sentences).

<b>Algeria</b>	<b>Iraq</b>	<b>Sudan</b>
<b>Bahrain</b>	<b>Kuwait</b>	<b>Tunisia</b>
<b>Egypt</b>	<b>Lebanon</b>	<b>United Arab Emirates</b>
<b>Iran</b>	<b>Morocco</b>	<b>Yemen</b>

## **OVERVIEW OF MIDDLE EAST AND NORTH AFRICA**

The surprise at the end of 2010 was the “Arab Spring,” giving hope to many journalists for a future of press freedom. But through most of the year, Middle East and North African governments were clamped down on reporters. Lawmakers were busy drafting laws to restrict the press. In Yemen, they were voting on whether to increase prison terms for “insult” offenses, and in the United Arab Emirates, they discussed a draft law to imposed heavy fines for “insulting” the royal family. Lebanon, however, was working on a law that analysts agreed would be a major step forward. Meanwhile, in Bahrain, officials launched a sustained crackdown on bloggers.

Huge fines were also the way to punish reporters in other MENA countries. In Morocco, an editor and a cartoonist faced a stunning \$383,000 damages for insulting a prince, though the case was eventually dropped. In Iraq, a weekly newspaper was slapped with a \$1 billion defamation suit filed by the head of the Kurdish Regional Government. In Lebanon, a TV presenter was charged with “slander” and fined \$20,000, with a three-month prison sentence.

Lebanon was also where Facebook became the focus of defamation issues. Three users were charged with “defamation,” “insult” and “slandering” the President. “Insult to the President” was a frequent charge in Iran, with tough sentences. One reporter was allegedly placed in solitary confinement pending trial, and a journalist for *Newsweek* was sentenced in absentia to 13 years and 74 lashes.

-- *P.McC.*



## ALGERIA

**Population: 35.4 million**

**Press Freedom Rating: Not Free**

The number of legal cases against journalists declined significantly in 2010, prompting Reporters Without Borders to raise Algeria's press ranking by eight places over 2009, to 133. Yet, many reporters still faced defamation charges.

→ In late 2010, Omar Belhouchet, Editor of *El Watan* and a frequent target of suits, still awaited trial on three libel charges for articles printed in 2008 and 2009.

→ Belkacem Belhamideche, the Director of French-language daily *Reflexion*, and one of his reporters, were both sentenced to six months in prison for publishing a letter by a local businessman, accusing a mayor of trying to bribe him.

→ Saleh Souadi, a journalist for *El-Khabar*, was also sentenced to six months in prison for defaming a hospital administrator. The case was considered weak since the article ran before the administrator assumed his post and did not name him.

### Relevant Laws

Both the 1990 Information Law and the Penal Code impose criminal penalties for defamation and insult. Amendments to the Penal Code in 2001 increased some applicable penalties.

### Penal Code

**Art. 144:** Anyone who insults, with the intent to affront the honor or respect of their authority, a magistrate, public official or officer, police officer in the exercise of their duties or in connection therewith, by words, gestures, threats, drawings or writings even not rendered public, is punishable by imprisonment of two months to two years and a fine of 1,000 to 500,000 dinars (approx. US\$14- 7,000) or one of these penalties. When the insult is committed against one or more magistrates or associate judges at a court or tribunal hearing, imprisonment ranges from one to two years.

**Article 144b:** Any person who offends the President in an expression deemed offensive, insulting or defamatory, be it orally, in drawings, declarations or through the support of any other electronic, computer or information means is punishable by imprisonment of three months to one year and a fine of 50,000 to 250,000 dinars (approx. US\$ 7,000-35,000) or one of these penalties. In case of recidivism, applicable penalties are doubled.

**Art. 144b(1):** When the infraction is committed in a daily, weekly or other publication, legal proceedings will be undertaken against the author of the insult, the managers and editors of the publication, as well as the publication itself. In this case, the authors of the infraction are punishable by imprisonment of three months to one year and a fine of 50,000 to 250,000 dinars (approx. US\$7,000- 35,000) or one of these penalties. In case of recidivism, penalties are doubled.

**Art.144b(2):** Offending the Prophet or the principles and tenets of Islam, in writing, a drawing, by declaration or any other means, is punishable by imprisonment of three to five years and a fine of 50,000 to 100,000 dinars (approx. US\$7,000-14,000), or one of these penalties.

**Art. 146:** These penalties in Arts. 144b and 144b.1 also apply in cases of offenses against the Parliament, courts, the ANP (National Popular Army) and any other public institution or constituent body. In case of recidivism, penalties are doubled.

**Art. 160b:** Voluntary and public tearing or profaning of national emblems is punishable by imprisonment of five to 10 years.

**Art. 296:** Every allegation or imputation of a fact that undermines the honor of the person or body to whom the fact is imputed is defamation. The direct publication or reproduction of such allegation or imputation is punishable, even if it is expressed in the form of a question, or targets a person or body not expressly named, where the identification is possible from the expressed comment, threat, writing, printed material, or poster.

**Art. 297:** Every outrageous expression, term of contempt or invective that does not contain an imputation of fact is an insult.

**Art 298:** Defamation of private individuals is punishable by imprisonment of five days to six months and a fine of 5,000 to 50,000 dinars (approx. US\$700- 7,000) or one of these penalties. Defamation with the intent to incite hatred among citizens or inhabitants, directed toward one or more members of an ethnic group, a group espousing a particular doctrine or any religion, is punishable by imprisonment of one month to one year and a fine of 10,000 to 100,000 dinars (approx. US\$1,400-14,000) or one of these penalties.

**Art. 298b:** All insults committed against one or more members of a particular ethnic group, a group espousing a particular doctrine or any religion, are punishable by imprisonment of five days to six months and a fine of 5,000 to 50,000 dinars (approx. US\$700-7,000) or one of these penalties.

**Art. 299:** All insults committed against one or more individuals is punishable by imprisonment of six days to three months and a fine of 5,000 to 50,000 dinars (approx. US\$700-7,000) or one of these penalties.



## **BAHRAIN**

**Population: 807,000**

**Press Freedom Rating: Not Free**

→ In September, well-known blogger, author and activist Ali Abdulemam was arrested shortly after receiving a call from the National Security Apparatus asking that he give himself up. He was charged with “spreading false news.” He was one of dozens of activists arrested during a serious media crackdown in August and September.

An outspoken advocate of press freedom, he started *Bahrain Online* in 1999. It quickly became one of the country’s most popular sites. Media watchers worried that authorities would also arrest citizens who were active on the site. He claimed he was abused in jail. In a statement released by the Bahrain Centre for Human Rights, Abdulemam told the court he was being “subjected to torture, beatings, insults and verbal abuse. They threatened to dismiss my wife and other family members from their jobs.”

→ Abdeljalil Al-Singace, another blogger arrested and detained with Abdulemam, told the court he also was tortured and that interrogators threatened to rape members of his family. Al-Singace was arrested upon arrival at Bahrain International Airport in August on a flight from London.

Along with several other activists arrested in August, Al-Singace was charged with “inciting violence and terrorist acts,” although later comments by authorities suggested the arrest was for criticisms by Al-Singace at a House of Lords conference in London.

Al-Singace was leader of an opposition group, the Haq Movement of Civil Liberties and Democracy. After his arrest, Al-Singace’s whereabouts were at first unknown to the family, although it was later evident he was incarcerated by the National Security Apparatus.

→ As part of the crackdown, the press was banned from reporting on the condition and alleged torture of detainees. Citizens began distributing fliers at shopping

malls, detailing the treatment of arrested bloggers and activists. Al-Qassem, 21, was arrested in November and charged with “distributing leaflets inciting hatred against the regime” and “offending the country’s reputation” and spreading “false news.” He was sentenced to a year in prison.

→ In June, journalist Anwar Abdulrahman was accused of “insult” by a local activist for an article in *Akhbar al-Khaleej*. Abdulrahman was charged personally, rather than in his capacity as Editor-in-Chief.

### **Relevant Laws**

**The 2002 Press Code (Law 47/2002)** prohibits criticizing the head of state, insulting Islam, and publishing news detrimental to individuals’ dignity. Lawmakers have for years discussed possible amendments, and changes finally introduced in 2008 eliminated prison sentences for most offenses under the law. But prosecution under the Penal Code of 1976, which provides for more severe penalties, remains possible.

### **Penal Code**

**Art. 174:** A punishment of imprisonment for a period of no more than two years and a fine not exceeding 200 Bahraini dinars (approx. US\$530) or either penalty shall be imposed on any person who produces or possesses, with the intent of trading, distributing, posting or displaying, any pictures designed to cause offense to the country’s reputation, whether by a presentation that is contrary to the truth, giving an improper description, presenting unbecoming aspects or by any other method.

The same penalty shall be imposed on any person who imports, exports, copies deliberately either personally or through others any of the above for the aforesaid purpose, or any person who advertises such materials, displays them for sale, or trades therein, even in a secretive manner; and on any person who provides such items directly or indirectly, even free of charge and in any manner whatsoever. The same penalty shall be imposed on whoever distributes or delivers such materials for distribution by any means.

In case of a recurring offense, the punishment shall be both imprisonment and payment of a fine without prejudice to the provisions of Art. 76 (which outlines applicable penalties in aggravating circumstances).

**Art. 214:** A prison sentence shall be imposed on anyone who offends the Emir of the country, the national flag or emblem.

**Art. 215:** A punishment of imprisonment for a period of no more than two years or a fine of no more than 200 Bahraini dinars (approx. US\$530) shall be imposed on any person who offends in public a foreign country or international organization based in the State of Bahrain, or its president or representative. The same penalty shall apply to a person who offends such organization's flag or official emblem. Legal action alleging this crime shall only be brought upon the written request of the Justice Minister.

**Art. 216:** A penalty of imprisonment or payment of a fine shall be imposed on anyone who offends by any method of expression the National Assembly, other constitutional institutions, the army, courts of law, authorities or government agencies

**Art. 222:** A punishment of imprisonment for a period not exceeding six months and a fine not exceeding 50 dinars (approx. US\$130) shall be imposed on any person who offends, with the use of signs, statements, writings or by any other method, a civil servant or officer entrusted with a public service during or by reason of carrying out the duties of his office or service. The punishment shall be imprisonment of no less than three months or a fine of at least 50 dinars (approx. US\$130) if the offense takes place during the convening of a court sitting and is aimed at the panel of judges or against its members.

**Art. 244:** A punishment of imprisonment for a period not exceeding one year or a fine not exceeding 100 dinars (approx. US\$260) shall be imposed on anyone who prejudices by way of publication the status of a judge, his prestige or his authority with respect to any legal action.

**Art. 309:** Imprisonment for a period not exceeding one year or a fine not exceeding 100 dinars (approx. US\$260) shall be imposed on any person who

commits an offense by any method of expression against one of the recognized religions, or ridicules the rituals thereof.

**Art. 364:** A punishment of imprisonment for a term of no more than two years or a fine of no more than 200 dinars (approx. US\$530) shall be imposed on any person who by any method of publication accuses another of having committed an act that renders the individual liable for penalty or subject to contempt.

The punishment shall be imprisonment and a fine, or either penalty, if the offense is committed against a public servant during or because of or by reason of discharging his duties, or if it affects one's honor or puts families into disrepute or if it is understood to be intended for attaining an illegal goal. If the offense is perpetrated by way of a newspaper or other publication, this shall be considered an aggravating circumstance.

**Art. 365:** A punishment of imprisonment for a period of no more than two years and a fine of no more than 100 dinars (approx. US\$260), or either penalty, shall be imposed on any person who insults another by any method of publication so as to affect his honor or integrity without making a specific accusation against him. If the insult is perpetrated by way of a newspaper or other publication, this shall be considered an aggravating circumstance.

**Art. 366:** A prison sentence for a period not exceeding six months or a fine not exceeding 50 dinars (approx. US\$130) shall be imposed if the defamation or insult is committed through the telephone or without provocation against the victim and presence of a third party.

The penalty shall be a fine not exceeding 50 dinars (approx. US\$130) if the offense is committed without provocation against the victim and in the presence of a third party.

If the offense is committed in the cases mentioned in the above two paragraphs against a public servant during, by reason of or on the account of discharging his duties, or if such offense affects one's honor or puts families into disrepute or if it is understood to be intended for attaining an illegal goal, this shall be regarded as an aggravating circumstance.

## EGYPT

**Population: 84.5 million**

**Press Freedom Rating: Partly Free**

Revolt against the rule of President Hosni Mubarak began to stir as the year came to a close, but during most of 2010, journalists remained in government crosshairs.



→ In a landmark case, an appellate court acquitted Hisham Bahaa El Din of “criminal libel” for a post on Facebook. It was the first time a libel suit was brought for Facebook content. In May, El Din was sentenced to two weeks in prison and posted \$1,800 bail. An actor and member of the Acting Profession Syndicate, he had posted a comment earlier in 2010 criticizing the Syndicate head.

→ Newspaper editor Yasser Barakat was convicted of “criminal defamation” and sentenced to two consecutive six-month prison terms and fines totaling nearly \$11,000. The case was over two articles by Barakat in 2008, in which he criticized Parliament member Mustafa Al-Bakry and his business deals with foreign governments. Barakat had been jailed for five days on similar charges in 2009. Al-Bakry has filed more than a dozen lawsuits against the editor.

→ In a case of one journalist against another, *Al Masry Al Youm* editor Maqdi Al Gallad sued journalist and blogger Ashraf Shehata for comments Shehata made about him on his blog. Shehata was previously a reporter for *Al Masry Al Youm*. Shehata was convicted of “criminal libel” and “insult.” Al Gallad also filed suit against the owner of the Internet cafe where Shehata blogged, as well as the Internet service provider. Shehata was sentenced to six months in prison and fined \$1,200. The other two men were each fined approximately \$8,700.

→ In November, veteran journalist Hamdy Kandil was charged with “criminal defamation” by the Foreign Minister. The suit was over an article Kandil wrote for *Al-Sherouq*, accusing Aboul Gheit of contradicting himself in comments on Israel. Kandil, a prominent journalist and former senior UNESCO staffer, was spokesman of the National Association for Change, a coalition of diverse leaders.

→ In June, *El-Wafd* Editor-in-Chief Gamal Shawky and reporter Magdy Salama were charged with “libel” and “defamation.” They were ordered to pay \$42,000 in damages to two members of the Council of State, who claimed their reputations were damaged in a 2008 article.

→ Journalist Magdy Ahmed Hessein was convicted in absentia and sentenced to a year in prison. The case goes back 14 years, when the family of a former government minister lodged a complaint against *El-Shaab* newspaper. Hessein was then fined some \$2,600. His lawyers challenged the verdict, and after lengthy proceedings, a less favorable verdict was rendered.

→ In June, *El Saf* online editor Sherif Abd El Hamid was arrested and charged with “libel” and “defamation.” The suit was based on posts that appeared on *El Saf* blaming a government official for the region’s poor standard of living. He was originally sentenced to six months in jail, but could have posted \$175 bail and gotten the sentence suspended. But the editor refused and spent four days in jail. After the case came back to a judge, a six-month sentence was imposed.

### **Relevant Laws**

The 1996 Press Law was amended in 2006, but the amendments contained many questionable provisions. The Penal Code also facilitates suppression of expression.

### **Penal Code**

**Art. 80(d)** provides for imprisonments of six months to five years, a fine, or both, for “any Egyptian who deliberately disseminates abroad false and tendentious information, statements or rumors on the internal situation in the country, with the aim of weakening confidence in its economy or undermining its stature or prestige, or who carries out any activity aimed at damaging the national interest of the country.”

**Art. 98** criminalizes contempt of religion. Subsection f) specifies “confinement for a period of not less than six months and not exceeding five years, or a fine of not less than 500 [Egyptian] pounds (approx. US\$88) and not exceeding 1,000 pounds (approx. US\$176) shall be the penalty inflicted on whoever makes use of religion in propagating, either by words, in writing, or in any other means, extreme ideas

for the purpose of inciting strife, ridiculing or insulting a heavenly religion or a sect following it, or damaging national unity.”

**Art. 102** allows detention and imposition of a fine on anyone who “deliberately diffuses news, information/data, or false or tendentious rumors, or propagates exciting publicity, if this is liable to disturb public security, spread fear among the people, or cause harm or damage to the public interest.”

**Art. 179** criminalizes and allows detention for “insulting the President.”

**Art. 181** penalizes individuals who “vilify” the king or president of a foreign country. The penalty is fixed at between six months and five years in prison, or a fine of 5,000 to 20,000 Egyptian pounds (approx. US\$880-3,520) for the editor and 10,000-30,000 pounds (approx. US\$1,760-5,280) for the journalist.

**Art. 184** provides for imprisonment, a fine ranging from 5,000 to 10,000 Egyptian pounds (approx. US\$880-1760), or both for anyone who insults “the People’s Assembly or the Shura Council or other statutory bodies, the army or the courts or authorities or public interests.”

**Art. 201** prohibits using a place of worship to criticize administrative decisions or existing laws and regulations.

Art. 308 imposes a minimum prison sentence of six months on journalists whose writings “comprise an attack against the dignity and honor of individuals, or constitute an outrageous smear on the reputation of families.”

## IRAN

**Population: 75.1 million**

**Press Freedom Rating: Not Free**

Sustained repression of the news media continued in the aftermath of the disputed elections of 2000. Many reporters were arrested for “propaganda,” “crimes against the state,” and “waging war on God.” Journalists could also be arrested for “insult to Islam,” a crime punishable by death.



→ Renowned journalist Mashallah Shamsolvaezin was sentenced to 16 months in prison on charges including “insult to the President.” Part of his sentence was punishment for calling President Mahmoud Ahmadinejad a megalomaniac on TV.

→ In February, Ali Malihi was convicted on several charges, including “insulting the President” for articles he wrote in various newspapers. The Committee to Protect Journalists reported that he was not permitted to meet his lawyer and was in solitary confinement.

→ *Newsweek* correspondent Maziar Bahari was sentenced in absentia to 13 years in prison and 74 lashes. He was convicted of, among other counts, “insult to the Supreme Leader,” and “insulting the President.” In 2009, Bahari spent four months in jail on “anti-state” charges.

→ Blogger and women’s rights activist Navid Mohebbi was charged with “insulting the Islamic Republic’s founder and current leader” and faced a long sentence. Eight militants came to his home to arrest the 18-year-old Mohebbi, believed to be the youngest blogger ever detained.

### Relevant Laws

#### Press Law of 1986

**Art. 3:** The press has the right to publish opinions, constructive criticisms, suggestions and explanations of individuals and government officials for public information while duly observing the Islamic teachings and the best interest of the community. Note: Constructive criticism should be based on logic and reason and void of insult, humiliation and detrimental effects.

**Art. 6:** The print media are permitted to publish news items except in cases when they violate Islamic principles and codes and public rights as outlined in this chapter:

1. Publishing atheistic articles or issues that are prejudicial to Islamic codes, or, promoting subjects which might damage the foundation of the Islamic Republic ...
5. Encouraging and instigating individuals and groups to act against the security, dignity and interests of the Islamic Republic of Iran within or outside the country;
7. Insulting Islam and its sanctities, or offending the Leader of the Revolution and recognized religious authorities (senior Islamic jurists);
8. Publishing libel against officials, institutions, organizations and individuals in the country or insulting legal or real persons who are lawfully respected, even by means of pictures or caricatures;
9. Committing plagiarism or quoting articles from the deviant press, parties and groups which oppose Islam (inside and outside the country) in such a manner as to propagate such ideas (the limits of such offenses shall be defined in an executive bylaw).

Note: Plagiarism means intentional ascription of all or a considerable part of the works and words of others to oneself, even in the form of translation.

**Art. 26:** Whoever insults Islam and its sanctities through the press and his/her guilt amounts to apostasy, shall be sentenced as an apostate and should his/her offense fall short of apostasy he/she shall be subject to the Islamic Penal Code.

**Art. 27:** Should a publication insult the Leader or Council of Leadership of the Islamic Republic of Iran or senior religious authorities, the license of the publication shall be revoked and its managing director and the writer of the insulting article shall be referred to competent courts for punishment.

**Art. 30:** Publication of any article containing slander and libel and use of invective language and derogatory allegations, etc., against individuals is prohibited and the guilty managing director shall be referred to judiciary authorities for punishment. Legal proceedings will follow if the injured party lodges a complaint against such offenses. However, should the plaintiff withdraw his/her complaint, prosecution would stop at whatever stage it may be.

**Art. 31:** Publication of articles that threaten to harm or disgrace a person or disclose his/her confidential affairs is prohibited and the guilty managing director shall be subjected to judicial authorities and punished according to the Islamic Penal Code.

### **Penal Code**

**Art. 500:** Anyone who propagates in whatever manner against the system of the Islamic Republic of Iran or in favor of groups or organizations that oppose the system shall be sentenced to imprisonment of three months to one year.

**Art. 513:** Anyone who insults the Islamic sanctities or any of the imams ... is subject to execution if the insult amounts to speaking disparagingly of Prophet Mohammed. Otherwise, the penalty consists of imprisonment of one to five years.

**Art. 514:** Anyone who in any way insults the founder of the Islamic Republic of Iran, Ayatollah Khomeini, or the Supreme Leader of the country, shall be sentenced to imprisonment of six months to two years.

**Art. 608:** Insults, such as swearing, or using profane language, if not punished based on the *haad* of malicious accusations, should be punished by flogging of up to 74 lashes or a fine.

**Art. 609:** Anyone who insults any of the leaders of the three branches of government, presidential deputies, ministers, any of the members of Parliament, or any ministry staff, or any other state employees, due to their duties, shall be punished by imprisonment of three to six months, flogging (74 lashes) or a fine.

**Art. 697:** Anyone who through the printed press or other media falsely accuses someone of an offense or crime shall be sentenced to imprisonment of one month to one year or flogging of up to 74 lashes (unless the punishment is specified in *haads*).

**Art. 698:** Anyone who in order to hurt someone else or to create unease in public or official minds publishes false information in the form of letter, complaint, report, or by means of the press, shall be imprisoned from two months to two years or be flogged (74 lashes).



## IRAQ

**Population: 31 million**

**Press Freedom Rating: Not Free**

→ In August 2010, the opposition weekly *Rozhnama* was accused of defamation by Massoud Barzani, President of the Kurdish Regional Government, who sought \$1 billion in damages and banning of the paper. Reporter Sirwan Rasheed alleged in a July article that the Kurdish Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) were together involved in an oil-smuggling operation to Iran. Oil smuggling is a contentious issue between Kurdistan and Iraq's central government in Baghdad. It not only violates sanctions against Iran but also deprives Baghdad of revenue.

→ Journalists elsewhere in Iraqi Kurdistan faced a flurry of libel suits as tensions flared among the media, government authorities and security forces. Three magazines -- *Lvin*, *Hawlati* and *Rega* -- were sued for alleging the Kurdish Democratic Party was involved in the murder of a journalist. They faced damage claims ranging from \$4,200 to \$42,500.

### Relevant Laws

The Publications Law of 1968 (No. 206) includes provisions prohibiting publishing materials "offensive" to the government. In July, the Iraqi government introduced a bill to abolish those provisions.

### Penal Code

**Art. 202:** Anyone who publicly insults the Arab community or the Iraqi people, or any section of the population or the national flag or the State emblem, is punishable by a term of imprisonment not exceeding 10 years or by detention.

**Art. 225:** Anyone who publicly insults the President or his representative is punishable by a term of imprisonment not exceeding seven years or by detention.\*

**Art. 226:** Anyone who publicly insults the National Assembly or the government or the courts or the armed forces or any other constitutional body or the public

authorities or official or semi-official agencies or departments is punishable by a term of imprisonment not exceeding seven years of detention or a fine.

**Art. 227:** Any person who publicly insults a foreign state or any international organization having an office in Iraq, or that country's Head of State or its representative in Iraq, or its flag or national emblem when it is displayed in accordance with Iraqi law, is punishable by a period of detention not exceeding two years plus a fine not exceeding 200 dinars (approx. US\$.20).

**Art. 229:** Anyone who insults or threatens an official or other public employee or council or official body, in the execution of their duties or as a consequence of those duties, is punishable by a period of detention not exceeding two years or by a fine not exceeding 200 dinars (approx. US\$.20).

The penalty will be a period of detention not exceeding three years plus a fine or one of those penalties if such insult or threat is directed at a judge or legal or administrative court or council carrying out a legal function in the execution of their duties or as a consequence of those duties.

**Art. 372:** The following are punishable by a period of detention not exceeding three years or by a fine:

1. Anyone who attacks the creed of a religious minority or pours scorn on its religious practices. ...
4. Anyone who prints or publishes a book sacred to a religious minority and deliberately misspells the texts so that the meaning of the text is altered or who makes light of its tenets or teachings.
5. Anyone who publicly insults a symbol or a person who constitutes an object of sanctification, worship or reverence to a religious minority.

**Art. 433:** 1. Defamation is the public imputation to another of a particular matter that, if true, would expose such person to punishment or cause him to be scorned by society. Anyone who defames another is punishable by detention plus a fine or by one of those penalties. If such defamation is published in a newspaper or publication or other press medium, it is considered an aggravating circumstance.

2. Such person is not permitted to establish the proof of his imputation unless that imputation is directed at a public official or agent or public deputy or he is carrying out an act in the public interest or if such imputation is connected with the office or employment of the aggrieved person but if he establishes the proof of all imputations made, then there is no offense.

**Art. 434:** Insult is the imputation to another of something dishonorable or disrespectful or the hurting of his feelings, and that does not include an imputation of a particular matter. Anyone who insults another is punishable by a period of detention not exceeding one year plus a fine not exceeding 100 dinars (approx. US\$10) or by one of those penalties. If such insult is published in a newspaper or publication or medium it is considered an aggravating circumstance.

**Art. 435:** If the defamation or insult is directed at the victim in private or during a telephone conversation or if it is sent to the victim in writing or communicated to him by other means, the penalty will be a period of detention not exceeding six months plus a fine not exceeding 50 dinars (approx. US\$5) or by one of those penalties.

**Art. 436:**

1. It is not an offense if a complainant or his representative defames or insults the other party orally or in writing while defending his rights before a court, investigating authority or other body, as long as it is within the necessary limits of his defense.

2. There is no penalty for any person who has defamed or insulted another while in a state of anger following an unjust assault on him by such other person.

*\* In June 2003, the Coalition Provisional Authority issued Order 7, stipulating that the third version of the Penal Code of 1969 would be the country's applicable criminal law. The third version was enacted in 1984. In addition, the order suspended certain provisions, including Sect. 225, which imposes prison penalties for insulting the President.*

*Furthermore, it specified that certain legal proceedings required written permission from the CPA; these included those involving offenses prohibited in*

*Sects. 226 (insulting governmental entities, court or armed forces), 227 (insulting foreign representatives), and 229 (insulting a public official).*

### **Iraqi Kurdistan**

Iraqi Kurdistan's Press Law (Decree No. 24 of 2008) specifies that fines ranging from 1 million to 5 million dinars (approx. US\$860-4,300) may be imposed on any journalist and editor-in-chief who publishes material that, among others, insults religious beliefs or religious symbols, or constitutes "libel, slander, or defamation" (Art. 9). Journals may be fined between 5 million and 20 million dinars (approx. US\$4,300-17,160) for the same offenses.

**KUWAIT****Population: 3.1 million****Press Freedom Rating: Partly Free**

→ The case that surely drew the most attention was that of freelance journalist Mohammed Al-Jassem, hounded with lawsuits throughout the year. By the end of 2010, there were no 18 suits pending against him, mostly for allegedly insulting public officials.



In April, a lower court sentenced him to six months in jail and a fine of \$17,400 for an article in 2009 accusing government-backed media outlets of inflaming tensions between Muslim factions.

The conviction was overturned in July. Meanwhile, al-Jassem was rearrested in May on various charges, including “slighting the person of the Emir.” In June, the journalist posted \$7,000 bail and was released. But in November, Al-Jassem was again convicted and sentenced to a year in prison. He was charged with “criminal defamation” of the prime minister for a blog post accusing him of a number of crimes, including embezzlement and money laundering. The sentence was reduced to three months on appeal.

→ In a related case, complaints of “insult” and “libel” were filed against an Egyptian editor and his Kuwaiti reporter for writing about the Al-Jassem hearings. *Al Dostor* editor Ibrahim Eissa and Mohammed Alweshaihi published articles not only on Al-Jassem but also about the failings of Kuwait’s regime.

**Relevant Laws**

Although changes to the media law were proposed in 2010, a new draft law was yet to be passed by the end of the year.

**The 2006 Law of Publications****Chapt. 3**

**Art. 19:** It is prohibited to publish what may touch God, the Prophets, the Companions of the Prophet, the citizens, or the principles of the Islamic doctrine

by slander, sarcasm, calumny in writings, drawings, photos or any other means of expression listed in the present law.

**Art. 20:** It is forbidden to make direct and forward criticism to the person of the Emir, and any words attributed to Him shall be by virtue of a written authorization from the Emiri Council.

**Art. 21:** It is forbidden to publish what may:

1. Demean or disdain the state Constitution.
2. Offend or demean the magistrates or the members of the Attorney General's office or what is considered an offense to the integrity and impartiality of the magistracy or what the courts or investigation authorities decide to keep secret...
7. Touch the dignity, life or religious beliefs of the persons and incite to hatred or demean any of the society classes, or spread information about their financial situations, or disclose a secret that affects their reputation, wealth or trade name.
8. Interfere in the private life of the functionary or [anyone] charged with a public service, or attributing untrue words or acts including defamation or insult to his person.

**Art. 27:** Without prejudice to any more severe punishment stipulated by another law, the editor-in-chief and the article's writer or author shall be punished:

1. If the journal publishes what is forbidden in Art. 19 by imprisonment for one year maximum and a fine ranging between 5,000 and 20,000 dinars (approx. US\$17,500-70,000) or by one of both punishments;
2. If the journal publishes what is forbidden in Art. 20 by a fine ranging between 5,000 and 20,000 dinars (approx. US\$17,500-70,000);
3. If the journal publishes what is forbidden in Art. 21 by a fine ranging between 3,000 and 10,000 dinars (approx. US\$10,500-35,000).

The Penal Code (1960) also outlaws insults to the Emir, and imposes criminal penalties for libel and slander.

**LEBANON****Population: 4.3 million****Press Freedom Rating: Partly Free**

Lebanon is known for one of the Arab world's most liberal media environments. Yet, its press law is archaic and unwieldy. Lawmakers spent 2010 working on an ambitious new law that analysts found encouraging in scope and content.

But by year's end, there was no new legislation, and defamation was still a criminal offense.

→ In June, three Facebook users were charged with “criminal libel,” “defamation” and “insulting the President” for posting comments critical of President Michel Suleiman on the site. They faced up to two years in prison. Na'im Hanna created a Facebook group to denounce the President for interfering in local elections. A few weeks later, security forces arrested Hanna. They had with them a printout of the comments he had made online. Days later, Antoine Ramia and Shebel Kassab were also arrested for comments they made in the online group.

→ In July, police surrounded *Al Jadeed* TV station and arrested Ghada Eid, the host of the program “Corruption.” She was charged with “slandering” a judge in one of the episodes. She was sentenced to three months in prison and fined \$20,000. She was also forced to read the accusations against her during her first broadcast after her release from jail.

→ In March, *Al Adab* magazine director Aida Matraji, and editor Samah Idriss, were convicted of “libel” and each fined \$4,000. The suit was filed by Iraqi publisher Fakhri Karim, who also served as counselor to the Iraqi president. The cases were rooted in a 2007 article by Idriss critical of Arabic intellectual mindsets.

**Relevant Laws****Law Decree No. 104 (June 30, 1977)**

**Art. 2** provides that publications that publish erroneous or false articles or news must publish replies or corrections submitted to them.

**Art. 3** specifies that, where the erroneous or false news may disturb the public peace, the responsible individual shall be punished by detention of six to 18 months, a fine of 500,000 to 1.5 million Lebanese pounds (approx. US\$330-1,000), or both.

Where the erroneous or false news concerns natural or legal persons, and does not disturb the public peace, the plaintiff must initiate proceedings. The applicable penalty consists of detention of three to six months, a fine ranging from 300,000 to 1 million Lebanese pounds (approx. US\$200-665), or both -- in addition to any damages awarded the plaintiff in a tort action.

**Art. 17** specifies that, where the decree does not address the situation in question, general penal law applies to cases of defamation, insult and contempt; however, the applicable statute of limitations shall be three months for residents of Lebanon and six months for foreign residents, from the date of publication.

**Art. 22** provides that defaming or insulting civil servants because of their duties is punishable by detention of one to six months, a fine of 300,000 to 500,000 Lebanese pounds (approx. US\$200-333), or both. When repeat offenders are involved, the court may not levy a penalty lower than specified in this section.\*

When the defamation or insult targets a public official, the applicable penalty consists of detention ranging from three months to one year, a fine between 500,000 and 1 million Lebanese pounds (approx. US\$333-665), or both. Offenses that target a sitting judge are punishable by detention ranging from one to two years. When repeat offenders are involved, the court may not impose a lower penalty than those specified in this section.\*

**Art. 23** provides that, where material is published that undermines the dignity of the President of the Republic, or is defamatory toward the President of the Republic or a president of a foreign nation, proceedings may be initiated, even without a claim by the prejudiced individual. The prosecutor may confiscate the material in question before transferring the matter to the relevant court.

The court may impose penalties consisting of detention of two months to two years, a penalty ranging from 50 million to 100 million Lebanese pounds (approx.

US\$33,250- 66,500), or both. This section specifies that in no circumstances may the imposed detention last less than one month, and the imposed fine less than the minimum amount set out in this section.\*

**Art. 25** applies to published material that defames any of the country's recognized religions, provokes religious or racial animosity, disrupts public order or exposes to danger the State's security, sovereignty, unity or borders, or Lebanon's relations with a foreign country. In such cases, the prosecutor has the right to confiscate the offending material and refer it to a competent court.

The court may impose penalties consisting of detention of one to three years, a fine ranging from 50 million to 100 million Lebanese pounds (approx. US \$33,250-66,500), or both. The section specifies that in no circumstances may the imposed detention last less than two months, and the imposed fine less than the minimum amount set out in the section.\*

*\* The Lebanese legal system in some cases permits courts, in light of mitigating circumstances, to levy penalties less than the legally prescribed minimums.*



## **MOROCCO**

**Population: 32.3 million**

**Press Freedom Rating: Not Free**

→ The bureau of Al Jazeera satellite TV was shut down in November for not respecting “the rules of responsible and serious journalistic work,” according to the Moroccan Communication Ministry. It complained that the network “seriously distorted Morocco’s image,” and intentionally showed Morocco in a negative light. Earlier in the year, two Al Jazeera journalists were refused entry visas, a common scenario for foreign reporters trying to access Morocco in 2010.

→ An editor and a cartoonist at *Akhbar Al Youm* had a case against them dropped early in the year. Taoufiq Bouachrine and Khalid Gueddar were ordered to pay upwards of \$383,000 for allegedly insulting Prince Moulay in a September editorial. The cartoon showed the prince giving what was interpreted as a Nazi gesture. It caricatured Morocco’s state symbol of a star. The newspaper was immediately shut down, the first such order in Morocco in 50 years. The two journalists were also given a four year suspended sentence. The prince dropped the case after they apologized.

→ In June, Radio Mars was shut down for two days and fined nearly \$7,000 for an offhand remark made on the air by a guest, who said he would like to be Morocco’s President. This apparently implied the monarchy would be abolished.

### **Relevant Laws**

Although calls continued to reform the Press Code, there were no changes in 2009. Until recently, courts have generally imposed fines, not prison terms, for defamation and insult. Developments during the year underscored the continued threat of the jail sentences under the Press Code. The Penal Code also carries problematic provisions, including Art. 263, penalizing “gravely offending state institutions.”

### **Press Code (2002)**

**Art. 29:** Import of journals and periodicals printed outside Morocco may be banned by the Communication Ministry if those publications undermine Islam, the monarchy, territorial integrity, respect for the King or public order. The Prime Minister may ban publication of foreign journals and periodicals printed in Morocco for the same reasons. If this is intentional, sale, distribution or reproduction of journals or periodicals is punishable by imprisonment from six months to three years, and a fine of 1,200 to 50,000 dirhams (US\$152-6,350). The copies of the journals or periodicals shall be seized, and, in case of conviction, the judgment will order their confiscation and destruction.

**Art. 38:** Those who directly provoke the author(s) to commit an act defined as a crime or misdemeanor, by speech, cries or threats made in public places or meetings, in writing, printed matter sold, distributed, offered for sale, or displayed in public places or meetings, by placards or posters in public view, or by the various available audiovisual or electronic means, are punishable as accomplices of an act defined as a crime or misdemeanor, if the incitement results in action. This provision also applies if the incitement is followed only by an attempted crime.

**Art. 41:** Any offense by the means specified in Art. 38, against His Majesty the King, the royal princes and princesses, is punishable by imprisonment of three to five years and a fine of 10,000 to 100,000 dirhams (approx. US\$1,270- \$12,700). The same penalty may apply where the publication of a newspaper or writing undermines the Islamic religion, the monarchical form of government or the territorial integrity.

In case of a conviction under this article, suspension of the newspaper or publication may be pronounced in the same judicial decision, for a period of no more than three months. Such a suspension will not affect the labor contracts into which the operator has entered, said operator continuing to be bound by all existing contractual or legal obligations. The court may pronounce in the same decision the ban of the newspaper or publication.

**Art. 42:** Publishing, disseminating or reproducing, in bad faith and by any means, particularly those outlined in Art. 38, false news, allegations, inaccurate facts, fabricated or falsified pieces attributed to third parties, that disrupt public order or

provoke public fear, is punishable by imprisonment from one month to one year, a fine of 1,200 to 100,000 dirhams (US\$152-12,700), or both. The same acts are punishable by one to five years of imprisonment and a fine of 1,200 to 100,000 dirhams where the publication, dissemination or reproduction may shake the discipline or morale of the military.

**Art. 44:** Any allegation or imputation of a fact that undermines the honor of or esteem for the persons or constituted bodies to which the fact is imputed constitutes defamation. Any offensive utterance, expression of contempt undermining personal dignity, or invective involving no allegations of fact constitutes an insult. Any direct publication or reproduction of that defamation or insult is punishable, even if posed in the form of a question or if directed against a person or constituted body not expressly named but which is identifiable from the terms of the incriminated speech, cries, threats, writings or publications, placards or posters.

**Art. 45:** Defamation of the courts, tribunals, the army, navy or air force, constituted bodies, or the government of Morocco, by one of the means specified in Art. 38, is punishable by imprisonment of one month to one year, a fine of 1,200 to 100,000 dirhams (approx. US\$152-\$12,700), or both.

**Art. 46:** The same penalties may be applied in cases of defamation by the same means against persons due to their function as minister(s), officer, trustee or agent of public authority, and all persons charged with a temporary or permanent public function or mandate, an assessor or a witness for giving testimony. Defamation of these persons concerning their private lives is punishable by the penalties provided in Art. 47 hereunder.

**Art. 47:** Defamation against persons by one of the means specified in Art. 38 is punishable by a term of imprisonment of one month to six months, by a fine of 10,000 to 50,000 dirhams (approx. US\$1,270-\$6,350) or both.

**Art. 48:** Insult committed by the same means of bodies and persons designated in Arts. 45 and 46 is punishable by a fine of 50,000 to 100,000 dirhams (approx. US\$6,350 -\$12,700). Insult by the same means against private individuals is

punishable by a fine of 5,000 to 50,000 dirhams (approx. US\$635-\$6,350), when the insult was not provoked.

**Art. 49:** The truth of a defamatory fact, solely when it is in relation to an official function or duty, may be established by normal channels in cases of allegations against constituent bodies, the army, navy or air force, government and against the persons listed by Art. 46. The truth of defamatory or insulting allegations may also be established against directors or administrators of any industrial, commercial or financial enterprise that solicits savings or credit from the public. Those designated as legally responsible for the publication must before publication hold evidence establishing the published facts.

The truth of defamatory facts may always be proven, except:

- a) when the allegation concerns the private life of the person,
- b) when the allegation refers to facts that are more than ten years old,
- c) when the allegation refers to an amnestied infraction that has been amnestied or subjected to the statute of limitations or that has been expunged by rehabilitation or reversal.

**Art. 50:** Any republication of an allegation that has been ruled defamatory shall be deemed to have been made in bad faith, unless the person responsible proves the contrary.

**Art. 51:** Anyone who transmits, through the post and telegraph service or by other electronic means, open correspondence containing defamation, either against individuals or against constituted bodies or persons enumerated in Arts. 41, 45, 46, 52, and 53, shall be punished by a maximum term of imprisonment of one month, a fine of 1,200 to 5,000 dirhams (approx. US\$152-\$635) or both.

If the correspondence contains an insult, that transmission will be punishable by a term of imprisonment of six days to two months and a fine of 200 to 1,200 dirhams (approx. US\$25-\$152). Where the facts at issue are those specified in Art. 41, the punishment shall be imprisonment of one to six months and a fine of 1,200 to 5,000 dirhams.

**Art. 51 bis:** Anyone who has published allegations, facts or photographs infringing the private life of a third person is punishable with a term of imprisonment of one to six months, a fine of 5,000 to 20,000 dirhams (approx. US\$635-\$2,500) or both.

**Art. 52:** Offensive statements in public against the persons of chiefs of State and their dignity, chiefs of government, and foreign ministers of foreign countries are punishable by a term of imprisonment of one month to one year and a fine of 10,000 to 100,000 dirhams (approx. US\$1,270-\$12,700) or solely one of those penalties.

**Art. 53:** Offenses committed publicly against the person and dignity of a foreign diplomatic or consular agent officially accredited or assigned to Our Majesty are punishable by a term of imprisonment of one to six months, a fine of 5,000 to 30,000 dirhams (approx. US\$635-\$3,820) or both.

**Art. 57:** No suits for defamation, insult or contempt will be admitted for accurate accounts of legal debates produced in good faith nor of statements or writings introduced before the courts. Nevertheless, judges who rule on the substance of the cases may strike from the record insulting, contemptuous or defamatory statements and sentence those responsible to payment of damages.

Judges may, in such circumstances, impose injunctions on lawyers and even suspend them. Such a suspension may not exceed one month, or three months if the offense is repeated within a year. Defamations unrelated to the cases at hand may nevertheless be the subject either of criminal or of civil suits by the parties if their right to bring suit has been maintained by the courts, and third parties may in any case bring civil suits.

**Art. 58:** In case of a conviction, the court may, in the cases provided for by Arts. 39, 40, 41, 52 and 53, order the confiscation of the writings or publications, placards, posters that have been seized and may order the seizure, removal or destruction of all the copies placed on sale, distributed or displayed to the public. The removal or destruction may be restricted to just parts of the seized copies.

**Art. 71:** The prosecution will be undertaken in accordance with applicable procedure before the competent court, except for the following changes:

1. In case of defamation of private individuals provided for under Art. 47 of this law and in the case of insult provided for under Art. 48, Para. 2, prosecution will be undertaken solely on the basis of a complaint by the defamed or insulted person;
2. In case of insult or defamation against the courts, tribunals or other bodies enumerated in Art. 45, the prosecution will be undertaken solely on the basis of a decision to prosecute made by them in plenary deliberations, or if the body does not have a plenary instance, upon the complaint of the person to whom the body is responsible;
3. In case of insult or defamation against members of our government, prosecution will be undertaken either on the basis of a complaint by the interested parties or of one made to the Prime Minister for transmission to the Minister of Justice;
4. In case of insult or defamation of officials or of persons holding public authority, prosecution will be undertaken on the basis of their complaint or of the government authority to whom they are responsible, addressed directly to the Minister of Justice;
5. In case of defamation of an assessor and of a witness, prosecution will be undertaken solely on the basis of a complaint by the assessor or by the witness;
6. In case of offense or contempt under Arts. 52 and 53 of this law, prosecution will be undertaken either at the request of the offended or outraged party, or at that person's request addressed to the Prime Minister or the Foreign Minister;
7. In case of infringement of the private life of private persons under Additional Art. 51 herein, prosecution will be undertaken solely on a complaint by the person against whom the allegations or false statements of fact were made.

**Art. 73:** The accused must prove the truth of the defamatory facts in accordance with Art. 49 above, within 15 days after notification of the citation, serve the prosecutor or the plaintiff's home, with 1. the facts of which he intends to prove the truth, 2. supporting documents, and 3. the names, professions, and addresses of the witnesses through whom he intends to prove his case.

## SUDAN

**Population: 43.2 million**

**Press Freedom Rating: Not Free**

President Omar Hassan al-Bashir was reelected in April in a landslide, an election judged to be not free and fair by observers. Journalists continued to face harassment and intimidation, which grew worse as election tensions mounted.

The security services threatened to imprison reporters who did not complete an alarmingly detailed questionnaire that polled them on their political views, names of friends, bank account information and even floor plans of their homes.



→ During the last half of the year, *Ajras Al-Hurriya* had 13 lawsuits pending against it on various charges, including “waging war against the State,” “erroneous reporting” and “defamation.” Three cases were filed by the police against the paper for posting to YouTube a video of a woman being beaten. In one of the most serious cases, editor Fayez Al Sheikh Al Saleek and reporter Haj Warraq were charged in May with “humiliating the State” and “erroneous reporting,” over an article that supported a boycott of the elections and alleged vote-rigging. The two faced fines and imprisonment.

→ In July, three journalists from *Rai Al Shaab* were sentenced to jail and the court ordered the newspaper closed and its assets seized. A fourth journalist was acquitted. They were arrested in May and charged with “crimes against the State.” Deputy Editor-in-Chief Abuzar Al Amin was sentenced to five years in prison. Editor Ashraf Abdelaziz and reporter Altahir Ibrahim were sentenced to two years.

### Relevant Laws

Sudan’s Parliament passed a new press law (“Law of Sudan on Press and Printed Press Materials”) in June, replacing the controversial 2004 Press and Publications Act. The new law was widely criticized for placing the press under a council closely tied to the President, imposing annual licensing, and allowing courts to levy unlimited fines (but no jail terms) for such broadly defined offenses as “religious agitation” and disrespecting “public morals.”

**Penal Code (1991)**

**Art. 116 (Insult of Public Servant During Judicial Proceedings):** Whoever intentionally insults a public servant while performing judicial proceedings shall be punished with imprisonment for a term not exceeding three months, with a fine, or both.

**Art. 125 (Insulting Religious Beliefs):** Whoever by any means publicly abuses or insults any religion or its beliefs or sacred symbols or seeks to incite contempt or scorn against its followers shall be punished with imprisonment for up to six months, a fine or with flogging of up to 40 lashes.

**Art. 157 *Qadhf* (Accusation of Unchastity):** Whoever imputes to any honorable living or dead person by express words, implicitly, by writing or via indicative signs accusations of Zina or Sodomy or illegitimacy commits *Qadhf*.

**Art. 158** provides that, if the penalty for *Qadhf* lapses for any reason specified in the section, the offender may be punished for defamation.

**Art. 159 (Defamation):**

1. A person is said to commit the offense of defamation when the person publishes, states or conveys to another, by any means, facts relating to a certain person or an evaluation of his manners with the intent to harm his reputation.

2. A person shall not be deemed to have intended to harm someone's reputation in any of the following cases:

a) If his act is within the course of any judicial proceedings to the extent necessary, or in a publication of these proceedings.

b) If he or any other person has a lawful complaint or interest to protect and this cannot be achieved without ascribing the facts or the correction of the specific behavior.

c) If his act relates to a person nominated to a public office or is in public office and was meant to remedy such person's capacity or performance to the extent needed.

d) If his act is within the context of advice to the person who deals with such person or in the public interest.

e) If the ascription of facts is made in good faith to a person who is well known for such acts ...

3. Any person who commits the offense of defamation shall be punished with imprisonment for a term not exceeding six months, with a fine or both.

**Art. 160 (Wrong and Abuse):** Whoever directs wrong or abuse toward any person, and this does not amount to *Qadhf* or defamation, with the intent of insulting him, shall be punished with imprisonment for a term not exceeding one month, flogging of up to 25 lashes, or a fine.



## TUNISIA

**Population: 10.4 million**

**Press Freedom Rating: Not Free**

In late December 2010, the “Arab Spring” began in Tunisia, in part because severe restrictions on free speech.

→ In April, independent journalist Taoufik Ben Brik was freed from prison after serving a six-month sentence for several convictions, including defamation. All charges were related to September 2009 articles in French news outlets, in which Ben Brik criticized the government. An appeals court upheld the sentence in February.

→ An appellate court also upheld the sentence of another independent journalist, Fahem Boukadous, who was sentenced in 2008 to four years in prison for “harm to public order.” The case stemmed from footage the journalist recorded of violent protests over the unemployment rate in a poverty-stricken region of the country.

Boukadous went into hiding after the original sentence was imposed in 2008, then for six years. However, Boukadous left prison when the President announced a pardon for prisoners jailed over the protests. He was immediately rearrested and forced to serve the remainder of his sentence despite the presidential pardon.

→ *Kalima* online reporter Mouldi Zouabi faced defamation charges over a 2009 story he reported about the Tunisian Boy Scouts. The reporter suggested the Scouts, run by a ruling party member, needed new leadership.

### Relevant Laws

#### Press Code of 1975 (last amended in 2006)

**Art. 48:** Insult of the President (by means of the press or any other intentional form of propagation) is punishable by one to five years’ imprisonment and a fine of 1,000 to 2,000 Dinars (approx. US \$780-1,560). Insult of an authorized religion

### Relevant Laws

#### Press Code of 1975

**Art. 48:** Insult of the President (by means of the press or any other intentional form of propagation) is punishable by one to five years imprisonment and a fine of 1,000 to 2,000 dinars (approx. US\$780-1,560). Insult of an authorized religion

is punishable by three months to two years imprisonment and a fine of 100 to 2,000 dinars (approx. US\$80-1,560).

**Art. 49:** The publication, dissemination or the reproduction, by whatever means, of false news, fabrications, falsifications, if made in bad faith, causing disorder to the public order or being susceptible to doing so, is punishable by imprisonment of two months to two years and a fine of 100 to 2,000 dinars (approx. US\$80-1,560), or one of these penalties.

**Art. 50:** Defamation consists of any public allegation or imputation of a fact that constitutes an attack on the honor or esteem of the individual or constituent body against whom the fact is imputed. Publication directly or by means of reproduction of such an allegation or imputation is punishable, even if it is done in a form that leaves it open to doubt or question or if it is aimed at an individual or body not expressly named but whose identification is possible by the terms of the speech, cries, threats, written or printed materials, placards, drawings or posters that are called into question.

**Art. 51:** Defamation committed via the press or any other intentional mode of propagation against the courts and tribunals, the armed forces, constituent bodies or the government is punishable by imprisonment of one to three years and a fine of 120 to 1,200 dinars (approx. US\$94-940).

**Art. 53:** Defamation of individuals by one of the means specified in Art. 42 (via the press or other means of intentional propagation) shall be punishable by 16 days' to six months' imprisonment and a fine of 120 to 1,200 dinars (approx. US\$94-940), or one of these penalties.

Defamation committed by the same means against a group of persons not specified in the present article but who belong by origin to a particular race or religion shall be punishable by one month's to one year's imprisonment and a fine of 120 to 1,200 dinars (approx. US\$94-940), if its object is to stir up hatred among citizens or inhabitants.

**Art. 54:** All outrageous expression, terms of contempt or invectives, that do not involve the imputation of a fact, constitute an insult. Insult by one of the means

specified in Art. 42 (via the press or other means of intentional propagation) towards constitutional bodies or persons specified in Arts. 51 et seq., (see above), if not preceded by provocation, is punishable by imprisonment of 16 days to three months and a fine of 120 to 1,200 dinars (approx. US\$94-940).

The pronounced penalty cannot be lowered under the minimum specified in the preceding paragraph. The maximum imprisonment penalty will be one year and the maximum fine 1,200 Dinars, where the insult is committed by the same means, towards a group of persons who belong by origin to a particular race or religion and the objective is to incite hatred amongst citizens and inhabitants.

**Art. 58:** Any reprinting of an imputation that has been judged to be defamatory will be considered to have been done in bad faith absent proof of the contrary.

**Art. 59:** Insult committed publicly towards foreign heads of state and members of government are punishable by imprisonment of three months to one year and a fine of 120 to 1,200 dinars (approx. US\$94-940), or one of these penalties.

**Art. 60:** Insult committed publicly towards heads of missions and other diplomatic agents accredited by the Tunisian government is punishable by imprisonment of 16 days to one year and a fine of 120 to 1,200 dinars (approx. US\$94-940), or one of these penalties.



## **UNITED ARAB EMIRATES**

**Population: 4.7 million (UN, 2010)**

**Press Freedom Rating: Not Free**

A draft law in the works in 2009 was set aside after critics balked at certain provisions it contained, not the least of which was massive fines for insulting the royal family. Insult was still a criminal offense, but encouragement came from the prime minister, who issued an order barring imprisonment of journalists. A promise was made to change the law to reflect the prime minister's order.

→ In August, freelance journalist Mark Townsend was charged with “defamation” in connection with comments in 2009 on a consumer web site. The posts were critical of *Khaleej Times* management. Townsend, a former editor at the *Khaleej Times*, denied posting the comments.

→ In another case involving web site comments, an appeals court upheld the defamation conviction of *Hetta* online editor Ahmed bin Gharib, who was ordered to pay a fine of \$8,100 and close the site for a month. The Abu Dhabi Media Company sued bin Gharib for comments posted by readers alleging corruption.

### **Relevant Laws**

#### **Penal Code of 1987**

It criminalizes printing material that causes “moral harm” (Art. 372) and defamation (Art. 373). The International Research & Exchanges Board, notes that possible penalties include two-year jail terms and fines of 20,000 dirhams (approx. US\$5,400).

#### **Federal Law No. 15 of 1980 Concerning Publications and Releases**

**Art. 70:** Direct and forward criticism of the person of the State President or the governors of the emirates is forbidden.

**Art. 71:** The release of what may include provocation or offense to Islam or to the regime in the country, or may damage higher interests of the state or the basic rules of society, shall be prohibited.

**Art. 76:** It is forbidden to publish what may bring shame to an Arabic or Islamic state or any other friendly state. It is also forbidden to publish what may trouble relations between the State and other Arabic, Islamic or friendly states.

**Art. 77:** It is forbidden to publish what may include a false accusation of the Arabs or a perversion of their civilization or tradition.

**Art. 79:** It is forbidden to publish news, photos or comments concerning the secrets of the private life or family secrets of individuals, even if they are true, if such diffusion affected the concerned person. It is also forbidden to publish what may include the disclosure of a secret that affects a person's reputation, wealth or trade name, or what may intend to threaten him or force him to pay money, do a favor for a third party or deprive him of his freedom to work.

**Art. 84:** It is forbidden to contest the work of a public functionary or a person of a public parliamentary capacity or charged with a public function with defamation. The writer is exempt from liability if it is proved that he in good faith believed that the facts attributed to such an individual were true and that this belief was reasonable.

**Art. 86:** Anyone who violates . . . Arts. 71 to 85 of the present law shall be punished by imprisonment ranging from one month to six months, a fine ranging from 1,000 to 5,000 dirhams (approx. US\$270-1,360), or only one of these.

In addition to the punishment stipulated in the previous paragraph, the court shall, depending on the situation, order the suspension of the journal or closure of the show house for up to one month.

**Art. 89:** Anyone who violates Art. 70 of the present law shall be punished by imprisonment for a period of six months to two years, a fine ranging from 5,000 to 10,000 dirhams (approx. US\$1,360-2,700), or only one of these.

The journal's editor-in-chief shall be punished by the penalty . . . in the previous paragraph. The court shall, in addition to the punishment . . . in both paragraphs previously mentioned, order the journal's suspension for up to six months.

## YEMEN

**Population: 24.3 million**

**Press Freedom Rating: Not Free**

Several draft media laws that threatened to further restrict press freedom were under consideration at the end of 2010. One of the most extreme would increase prison terms for “insult” convictions.



The Specialized Press and Publications Court, a media tribunal set up in mid-2009, continued to be a means for prosecuting journalists.

→ President Ali Abdallah Saleh issued ambiguous pardons in dozens of cases pending against journalists. The official ambiguity was seen as a tool to insure reporters practiced self-censorship to keep their cases inactive.

Hussein al-Laswas was one of the journalists pardoned. He had been sentenced to a year in prison for criminal defamation of a public official. Al-Laswas, editor of *Al-Tajdid*, was convicted in May over articles on corruption at the power company.

→ *Al Thaqafieh* journalist Moaz Al-Ashihabi was convicted early in the year by the Special Court and sentenced to a year in prison for reporting that “infringed on the Islamic faith.”

→ Anisa Othman, a reporter for *Al-Wasat*, was sentenced to three months in prison and banned from journalism for a year after she was convicted of “offending the President.” Othman was the first female journalist sentenced to jail for her articles.

→ In April, *Aleshteraki* editor Muhammad al-Maqaleh was charged with “insulting the President” and ordered to appear before the Special Court. The charge stems from a 2005 article criticizing the President for running for reelection, after promising not to do so. Maqaleh faced a two-year jail term. In early February, Maqaleh reappeared after being kidnapped by government forces five months

earlier. He was eventually charged with “supporting rebels” over an article criticizing air raids that killed 87 persons. Charges were dropped in March.

→ The Special Court sentenced *Al-Masdar* reporter Munir Al-Mawari to two years in prison and a lifetime ban from journalism for libel. Editor-in-Chief Samir Jubran was given a one-year suspended sentence. The case stemmed from an article Al-Mawari wrote in May 2009 denouncing the war strategy against Shiite rebels.

→ Editor Samir Jubran faced various additional charges, along with four more members of his staff, including “disturbing public order,” “inciting regionalism,” and “threatening national unity.”

### **Relevant Laws**

#### **1990 Press and Publications Law (No. 25)**

**Art. 103:** Persons employed in radio, television and written journalism and especially those employed in responsible positions in radio and television journalism, owners and editors-in-chief of newspapers, owners of printing presses and publishing houses and journalists, shall abstain from printing, publishing, circulating or broadcasting:

a) Anything which prejudices the Islamic faith and its lofty principles or belittles religions or humanitarian creeds. ...

d) Anything which leads to the spread of ideas contrary to the principles of the Yemeni Revolution, prejudicial to national unity or distorting the image of the Yemeni, Arab or Islamic heritage

e) Anything which undermines public morals, prejudices the dignity of individuals, or the freedom of the individual by way of smears and defamation. ...

j) Advertisements containing texts or pictures that are inconsistent with Islamic values and public ethics, defame or libel individuals, attack the rights of others or mislead the public ...

**Art. 104:** Without prejudice to any more severe penalty under another law, any person who contravenes the provisions of this law shall be subject to a fine not exceeding 10,000 riyals (approx. US\$ 50) or a period of imprisonment not exceeding one year.

**Art. 106:** The court may order the imposition of any of the following supplementary penalties:

a) Prohibition of continued practice of the profession of journalism, circulation and printing of newspapers and printed materials or of the import, export, renting or sale of cinema films at the exhibiting of artistic compositions or any other of the professions covered by the provisions of this law for a period not exceeding one year.

b) Confiscation.

**Art. 107:** A newspaper or printed material may, by a decision of the Minister or his deputy, be seized by administrative action if it has been printed, issued or circulated in violation to the provisions of this law. The matter shall be brought before the courts to rule on whether the material seized should be confiscated.

The person concerned has the right to appeal to the courts against the decision of seizure and to claim compensation.

The Penal Code (Republican Decree, Law No. 12 for 1994, Concerning Crimes and Penalties) imposes prison sentences for insulting public employees (Art. 172, up to one year), and the President (Art. 197, up to two years).