

# **THE RIGHT TO OFFEND, SHOCK OR DISTURB**

**A Guide to Evolution of Insult Laws  
in 2007 and 2008**

by Carolyn R. Wendell

preface by Richard N. Winfield

introduction by Caroline Fourest

World Press Freedom Committee publication

sponsored by Ringier AG

The World Press Freedom Committee is a coordination group of national and international news media organizations. It has 45 affiliates on six continents and is dedicated to:

- News media free of government interference
- A full and free flow of news
- Practical assistance to media needing it

For more information about WPFC, please consult our web site,  
[www.wpfc.org](http://www.wpfc.org)

**Funding of this publication, by Ringier AG, Zurich, Switzerland**

Country maps by permission of The Heritage Foundation, Washington, D.C.  
Press freedom ratings by Freedom House, New York, N.Y.

Editor of the publication, Ronald Koven

Other WPFC publications on this subject include:

“Insult Laws: An Insult to Press Freedom,  
Study of More Than 90 Countries and Territories”  
by Ruth Walden, 286 pages, 2000

“Hiding From the People, How ‘insult’ laws restrict public scrutiny  
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,”  
edited by Marilyn Greene, 306 pages, 2007

Those publications and copies of this book may be obtained by contacting:

World Press Freedom Committee  
11690-C Sunrise Valley Drive  
Reston, VA 20191 USA  
Tel. 1 (703) 715-9811  
Fax 1 (703) 620-6790  
E-mail: [freepress@wpfc.org](mailto:freepress@wpfc.org)

Published by the World Press Freedom Committee © 2009

## Table of Contents

<b>Biographical Notes</b> .....	1
<b>Preface: The Seven Cardinal Sins of Insult Laws</b> by Richard N. Winfield .....	3
<b>Introduction: Defamation of Religions <i>versus</i> Free Speech</b> by Caroline Fourest .....	5
<b>European Union and Turkey</b>	
Cyprus .....	10
France .....	12
Greece .....	16
Poland .....	19
Romania .....	21
Slovenia .....	23
Spain .....	27
Turkey .....	30
United Kingdom .....	37
<b>Former Soviet Union</b>	
Azerbaijan .....	40
Belarus .....	44
Kazakhstan .....	47
Kirghizstan .....	51
Moldova .....	53
Russia .....	54
Tajikistan .....	61
<b>Sub-Saharan Africa</b>	
Burundi .....	64
Cameroon .....	65
Central African Republic .....	67
Chad .....	68
Congo, Democratic Republic .....	69
Gambia .....	70
Lesotho .....	72
Liberia .....	73
Mali .....	74
Mauritania .....	75
Niger .....	76
Rwanda .....	77
Senegal .....	78
Sierra Leone .....	81

## **Latin America**

<b>Argentina</b> .....	84
<b>Brazil</b> .....	87
<b>Chile</b> .....	88
<b>Colombia</b> .....	91
<b>Mexico</b> .....	93
<b>Uruguay</b> .....	97

## **Asia**

<b>Afghanistan</b> .....	100
<b>China</b> .....	102
<b>India</b> .....	105
<b>Indonesia</b> .....	107
<b>Malaysia</b> .....	110
<b>Mongolia</b> .....	111
<b>Singapore</b> .....	114
<b>Sri Lanka</b> .....	117
<b>Thailand</b> .....	119

## **Middle East/North Africa**

<b>Algeria</b> .....	126
<b>Bahrain</b> .....	128
<b>Egypt</b> .....	129
<b>Iran</b> .....	132
<b>Iraq</b> .....	135
<b>Jordan</b> .....	137
<b>Kuwait</b> .....	139
<b>Lebanon</b> .....	141
<b>Morocco</b> .....	143
<b>Saudi Arabia</b> .....	148
<b>Syria</b> .....	150
<b>Tunisia</b> .....	152
<b>Yemen</b> .....	154

## BIOGRAPHICAL NOTES

Carolyn R. Wendell: As a freelance writer and editor, she has worked with public agencies, nonprofit groups and businesses. She currently works with The World Bank, Freedom Communications, and others. Previously, she spent eight years in the Community Publishing Division of Gannett Co., Inc. She conducted the research for the World Press Freedom Committee's 2006 world insult law survey, "It's a Crime: How Insult Laws Stifle Press Freedom." Wendell earned a Bachelor's degree in government from the College of William & Mary and a Master's in education from the University of Virginia. She lives in Falls Church, Virginia with her husband and daughter.

Caroline Fourest: A prominent French journalist and author specialized in religious fundamentalism, secularism, right-wing political movements and feminism, she is co-founder and editor of the magazine *ProChoix* (Pro-choice), a regular contributor to the satirical weekly *Charlie Hebdo* and columnist for the daily *Le Monde*. She won the prestigious political book of the year prize in 2006 for "*La Tentation Obscurantiste*," (The Obscurantist Temptation), awarded at the French National Assembly. In 2005, she won the Prix national de la laïcité (National Secularism Prize), awarded at Paris City Hall. Her book on Islamist thinker Tariq Ramadan appeared in English in 2008 as "Brother Tariq: The Doublespeak of Tariq Ramadan" (Encounter, New York/Social Affairs Unit, London). Fourest teaches at the Political Sciences Institute of Paris and graduated from EHESS, France's School for Advanced Studies in Social Sciences, and the Sorbonne.

Richard N. Winfield: The Chairman of the World Press Freedom Committee since spring 2006, he was the general counsel of the Associated Press for more than 30 years, as a partner and US First Amendment specialist at the law firm of Rogers & Wells. Since the mid-1990s, he has led the media law reform programs of the American Bar Association/Central European and Eurasian Law Initiative in former Soviet bloc countries. The International Senior Lawyers Project, which he co-founded in 2000, has continued and expanded this work to Algeria, China, Japan and Turkey. Since 2002, Winfield has taught comparative mass media law and American media and Internet law at the Law Schools of Columbia and Fordham Universities. He also taught European history and US diplomatic history at the US Naval Academy in Annapolis, Maryland.



## PREFACE

### **The Seven Cardinal Sins of Insult Laws**

by Richard N. Winfield

Judges in Europe use a telling phrase to describe a particularly nasty kind of unfairness in the administration of justice: they call it an “inequality of arms.” It happens when the resources and legal doctrines overwhelmingly favor one legal adversary over another.

When a politician demands that the public prosecutor bring an indictment and go to trial against a journalist for the crime of violating an insult law (by criticizing the politician), the stage is set for a grotesque inequality of arms. Consider:

First, the public prosecutor invariably does the bidding of the politician, particularly if he belongs to the ruling party.

Second, the politician avoids the inconvenience and cost of having to pay a lawyer to handle his case. The taxpayers, not the politician, pay the public prosecutor to prosecute the journalist.

Third, the politician and the public prosecutor are secure in the knowledge that, in a typical case, the defendant journalist cannot defend the case on the ground that the criticism (or the insult) was true. Truth, typically, is no defense to insult.

Fourth, the defendant journalist needs to find and pay for a competent lawyer who is politically independent and immune from pressures from the government. Legal aid is rarely, if ever, available.

Fifth, the independence of the judiciary can never, never be assured.

Sixth, the typical insult law provides stiff fines and imprisonment. In some countries the penalties are stiffer if the claimant happens to be a public official.

Seventh, the scars remain. The defendant journalist, once convicted (and conviction is a foregone conclusion) bears the stigma of a criminal conviction. It often means the end of a journalistic livelihood.

Taken together, these elements aggregate into a gross inequality of arms between the politician and the embattled journalist. The 2006 case of *Lyshanko vs. Ukraine* illustrates the unfairness when the claimant is a powerful public official. In that case, a journalist criticized Ukraine’s acting Prime Minister for official misconduct. The acting Prime Minister responded by summoning Ukraine’s General Prosecutor to his office and ordering him to commence a criminal defamation proceeding. The General Prosecutor

indicted, tried and convicted the journalist. The European Court of Human Rights found these governmental abuses violated Lyshanko's freedom of expression under Art. 10 of the European Human Rights Convention.

This case is far from exceptional. It is the rare case when the claimant in a criminal insult prosecution is not a politician. As of July 2008, the European Human Rights Court had decided, or had agreed to decide, 13 cases where Russian courts had punished a Russian journalist who had insulted or defamed a claimant. In almost all of those 13 cases, the claimant was a public official.

It takes no imagination to conclude that the real purpose behind insult laws -- why they were enacted, why they stay on the statute books, and why they are deployed so often and so vigorously by political elites -- is to intimidate.

Humor is among the first casualties when public officials launch insult prosecutions. A few years ago, a Russian Internet magazine editor found humor in Vladimir Putin's announcement of his plans to increase Russia's declining birth rate. He posted a satire entitled "Putin as Russia's Phallic Symbol." Unamused, the government charged the editor with criminal insult of the President of the Russian Federation. The editor was tried, criminally convicted, and fined 20,250 Rubles (approx US \$600). The magazine's offices were raided and sealed; its computers seized; its web site blocked, and the editor's apartment was raided.

It is not enough to say that international courts like the European Court will sort out the insult law problem and redress the inequality of arms inherent in every insult law prosecution. The European Court has a backlog of more than 100,000 cases of all kinds from 47 countries. The average case takes many years before the Court renders a final decision; only a fraction of the insult law convictions ever reach an international tribunal.

Insult laws are so anti-democratic and so unfair that no amount of fine-tuning can save them. Complete repeal is the only sensible remedy.



## INTRODUCTION

### **“Defamation of Religions” *versus* Free Speech**

by Caroline Fourest

On March 27, 2008, the United Nations Human Rights Council passed a resolution against the “defamation of religions,” by a vote of 21 to 10, with 14 abstentions. The European Union member-states on the Council voted “No.” But the bloc of OIC members (Organization of the Islamic Conference) garnered a majority, thanks to the support of China, Cuba and Russia -- countries not previously known for their solicitude toward religion. What actually unites the common front of the Yea-sayers is their common desire to restrict freedom of expression, a basic value of the Universal Declaration of Human Rights. With little fanfare, adoption of that resolution struck a tragic blow against the Universal Declaration.

The Moslem countries have sought such a victory since the 1990s. Despite the differences between countries like Morocco and Iran, they speak with a single voice at the UN -- that of the OIC, a group created after the 1969 fire-bombing of the Al Aqsa Mosque in Jerusalem<sup>1</sup>. The OIC was the initiative of Saudi Arabia, which has never signed the Universal Declaration. The OIC’s purpose is to coordinate the activities of Muslim countries in the UN system, notably on the Middle East, but also to “promote the image of Islam.” In 1990, its then-45 member countries (now 57) adopted a Cairo Declaration of Human Rights in Islam based not on the Universal Declaration but on Islam’s Sharia law code.

Since the wave of violent protests over alleged blasphemy of the 1988 novel “The Satanic Verses” by Anglo-Indian novelist Salman Rushdie (leading to a *fatwa* -- religious decree -- by Iran’s Ayatollah Ruhollah Khomeini condemning the author to death), some OIC diplomats have been pondering how to use the UN to ban blasphemy against Islam, even by non-Muslims and even in non-Islamic countries. A first step against freedom of expression came in 2003 when the UN Human Rights Commission was chaired by Libya. The Commission’s Special Rapporteur Against Racism then, a respected judge from Benin in West Africa, was accused of anti-Islamic blasphemy for having said in a report, “Muslim extremists are turning more and more to their own religious writings, first of all The Koran, as a source of anti-Semitism.” He was replaced by a far more accommodating man from Senegal, Doudou Diene<sup>2</sup>. His reports immediately stopped tracking religiously

---

<sup>1</sup> Known to Muslims as the *Haram as-Sharif*, or *Noble Sanctuary*, the Al Aqsa Mosque facing the Dome of the Rock on the Temple Mount is the reputed site of a visit by the Prophet Mohammed on his winged horse. A pulpit presented by Saladin, the chivalrous Muslim victor over the Crusader Kingdom of Jerusalem, was burnt in the fire. It sparked anti-Israeli riots across Islam, although Israel tried the self-admitted arsonist, Dennis Michael Rohan, an Australian Evangelical Christian, eventually ruled insane and deported.

<sup>2</sup> Doudou Diene was UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2002-08. He was No. 2 in Senegal’s UNESCO delegation, 1972-77, joined the UNESCO Secretariat in 1977, headed the UNESCO Liaison Office in New York, 1980-85, becoming UNESCO’s spokesman, 1985-87, under Director General Amadou-Mahtar M’Bow, also of

inspired expressions of hatred, instead declaring war on perceived insults of religions, mainly “Islamophobia.”

This ambiguous word creates confusion between any criticism of Islam as a value system, or even of Islamic fundamentalism, with a form of racism directed against Muslims. It’s as if a critique of communism or of American neo-conservatism were labeled “Communistophobia” or “Americanophobia.” It’s not so much an attempt to identify racism against Muslims (which does exist) as an attempt to use anti-racism as an arm against blasphemy and heterodox views.

In Ayatollah Ruhollah Khomeini’s Iran, the mullahs labeled as “Islamophobes” the American feminists who had supported the Islamic revolution out of anti-imperialism but then dared to challenge the obligation for Iranian women to wear the chador. The word re-emerged in Britain during the Rushdie affair in the mouths of Islamic groups railing against “The Satanic Verses.”

Trying to pass itself off as the Arab-language branch of Amnesty International, a radical Islamist association, the Islamic Human Rights Commission, is now the main group initiating lawsuits for “Islamophobia,” which it defines as “a violation of the rights of God.” On its web site, it gives two examples of the main victims of that scourge -- Talibans and Palestinian Islamists -- not Palestinians generally, just Islamist Palestinian militants. The two greatest “Islamophobes,” it claims, are Salman Rushdie and Taslima Nasrin, a secularist Bangladeshi writer widely denounced as an apostate from Islam.

During the 1990s, despite its clearly fundamentalist origin, the word was widely adopted by the political Left and even at international institutions like the UN. It became the main thrust of the official UN reports on racism produced by Doudou Diene from 2004 to 2008.

His reports ignore the discrimination and violence which Muslims are subject to in countries like India or China. Their focus instead is on the press and the French secular model (*laïcité*), accused of nurturing distrust of religion.

The Danish cartoons affairs or simple criticisms of wearing the *burqa*, which completely covers women head to foot, are examples Diene most often cited to justify his calls for the UN Human Rights Council to “go beyond law and rights to attack the deep roots of the defamation of religions” -- in tune with the calls of the OIC governments. Thanks to the 17 out of 47 seats it won in 2006, when the UN Human Rights Commission was reorganized as the UN Human Rights Council, the OIC’s dream became reality.

A few months later, the same countries leaped on the pretext of the film “Fitna<sup>3</sup>” to go further in advocating censorship. That idiotic video, directed by Dutch Member of

---

*Senegal. Diene was a leading advocate of UNESCO’s controversial “New World Information and Communication Order” campaign for international press controls.*

<sup>3</sup> *A 15-minute film purporting to demonstrate, with Koranic quotes and depictions of violence by Muslims, that Islam is essentially violent.*

Parliament Geert Wilders does indeed criticize Islam xenophobically. It has been distributed solely via Internet and is no justification to restrict freedom of expression on religions. The OIC countries nevertheless took advantage of the scandal over the film to modify the mandate of the UN Human Rights Council's Special Rapporteur on Freedom of Opinion and Expression. He is now responsible not only for defending freedom of expression in countries where the press is unfree but he is called on, above all, "to report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination." In other words, he is to hunt down journalists and free thinkers. It is a staggering reversal that left the NGOs speechless and brought home for some democracies just how much of a threat there now is to Article 19 of the Universal Declaration of Human Rights, dating from 1948.<sup>4</sup>

First to be worried are democrats in Moslem countries. They know better than anyone that blasphemy laws are meant to silence all opposition and to persecute religious minorities. That is the cynical aspect to this approach. The countries campaigning against "defamation of religions" to restrict freedom of expression are among the first to martyrize their religious minorities: Pakistan, Egypt, Algeria, China. A 23-year-old Egyptian law student, Karim Ameer, has been serving a three-month sentence for insulting Islam and the President. He was punished for his blog critical both of the fundamentalists and of the authorities.

### **Blaspheming Jesus Christ, Prophet of Islam**

In Pakistan, two Christian students have been facing trial for blasphemy -- like 900 persons before them. In that predominantly Islamic country, they violated a legal taboo by putting up in the halls of their university a picture of Christ on the Cross. It was a symbolic provocation -- a double blasphemy under Pakistani law. Contradicting the Koran's denial that Christ was crucified, it also defied the ban on images of Islam's Prophets, of whom Christ is considered one.

The two students risk the death penalty under a law that punishes whoever blasphemes "by words or by image, or by direct or indirect inference or insinuation." This law serves against political opponents, while restricting the freedom of religious minorities. According to the Pontifical Council for Justice and Peace, 80 Christians are imprisoned in Pakistan, alongside Hindus, Sikhs or Ahmadiyya, an Islamic breakaway reform sect. At least 20 persons have been killed by mobs, like a 22-year-old Hindu worker beaten to death by his factory co-workers after he started a conversation on religion.

The climate is hardly better for religious minority members in Algeria. In March 2008, Habiba Kouider, an Algerian teacher was arrested for carrying a Bible. Her prosecutor

---

<sup>4</sup> Art. 19, UDHR: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

offered her a deal: “If you rejoin Islam, I’ll drop the case; if you persist in sin, you’ll feel the lightning bolts of justice.” At the time of writing, the verdict was awaited.

Such realities don’t inhibit the representatives of Pakistan and Algeria from administering lessons on religious respect at the UN Human Rights Council in Geneva. Nor does it stop them from thundering against a French secularism (*laïcité*) which they accuse of “Islamophobic” finger-pointing at France’s Muslim minorities. It is a surrealistic travesty of reality. France’s legal separation of religion and state does not single out any particular religion, and one poll shows that 67 per cent of Muslims in France see it as positive. Yet, Algerian, Egyptian and Pakistani non-Muslims are discriminated against, as their governments continue to play with the fire of linking religion and politics.

It is no coincidence that those countries insist on the concepts of “Islamophobia” and of “defamation of religions” instead of joining in a struggle against incitement to hatred of individuals for their religious beliefs.

### **Skirting Polemics**

I had an exchange on “defamation of religions” with the head of the Pakistani Delegation to the UN Human Rights Council. She assured me that she wanted only to ban insults, not criticisms, of religions. She cited the Danish cartoons of Mohammed as an example of insults, noting that Islam forbids the representation in images of religious figures like Mohammed, Jesus or Moses. She said the Danish cartoons were an incitement to hatred. When I asked whether she didn’t think that Iran’s cartoon-drawing contest on the Holocaust against the Jews was also an incitement to hatred, she refused to reply. The subject is “too polemical,” said she.

The current ideological challenge is not a “clash of civilizations” but a clash of perceptions between two worlds with two completely different concepts of freedom of expression. There is a sea of incomprehension between countries on one side, where one can incite hatred against individuals over their religions but where it is forbidden to contest the symbols of the predominant religion, even on pain of death. And, on the other side, are secularist countries where all religions and their symbols may be criticized but incitement to race hatred, racist discrimination, or denial of the reality of a crime against humanity is subject to monetary fines. Unless the second vision wins out, the future of the Universal Declaration of Human Rights is under severe threat. Freedom of expression will no longer be restricted to protect individuals from hatred but to protect a fundamentalist view of religion that incites hatred of individuals for their religious choices. More than ever, the struggle for freedom of expression is tied to that of preserving the separation of religion and politics. -- 18 March 2009

***Translated and adapted by Ronald Koven***

# European Union and Turkey

Cyprus  
France  
Greece  
Poland  
Romania  
Slovenia  
Spain  
Turkey  
United Kingdom

CARICATURE

Scorn

Ridicule

Satire

Contempt

Blasphemy

Abuse

SEDITIONOUS LABEL

INSULT

Offense

Protect Honor and Dignity

Mockery

Irony

Disrespect

PARODY

SATIRE

outrage

Affront

Defamation of religion

LÈSE-MAJESTÉ

## CYPRUS

Population: 800,000

Press Freedom Rating: Free

Freedom of speech and expression are guaranteed under Art. 19 of the Constitution of the Republic of Cyprus. These rights are generally respected in practice. The press in the Republic, occupying two-thirds of the island of Cyprus, frequently criticizes authorities.



Since a 1974 Turkish military invasion, the island has been partitioned between the Turkish Republic of Northern Cyprus and the Republic of Cyprus in the southern part of the island, separated by a UN-controlled Green Line. There have been ongoing UN-backed reunification efforts, including a 2004 plan accepted by Turkish Cypriot voters but rejected by the Greek-speakers. While Northern Cyprus has a separate Constitution and Supreme Court, the two entities have compatible legal systems, based on the English Common Law inherited from British colonial rule.

### Developments

➔ In December 2006, Dogan Harman, publisher and editor-in-chief of the newspaper *Kibrisli* and the publication itself were tried for insulting Northern Cypriot Attorney General Akin Sait and his honor. The insult and criminal defamation charges against Harman and his publication could have landed him in prison, forced him to pay a stiff fine and shut down his newspaper.

The charges stemmed from an extensive journalistic investigation Harman conducted into the affairs of a local businessman, which inflicted extensive financial damage on several companies and public institutions. Harman criticized the apparent inaction of the Attorney General's office, and demanded that an official investigation into whether serious crimes were committed.

Claiming that he was insulted by Harman's insistence, the Attorney General invoked the Penal Code's provision 154 – an insult law inherited from British rule – under which Harman could have been jailed, heavily fined and barred from publishing his paper.

WPFC wrote the Attorney General and provided a Fund Against Censorship grant for Harman's legal defense. This ultimately resulted in the Northern legislature reforming the law, with an amendment to protect journalists from its harmful effects and a retroactivity clause nullifying the charges against Harman. Attorney General Sait appealed to the Supreme Court, claiming the amendment was unconstitutional. Finally, in 2008, Sait dropped the charges, thus giving independent media a historic victory in Northern Cyprus.

WPFC's intervention was widely publicized in the local press. Far from being shut down, Harman's publication has thrived since then. Its circulation has doubled and two new editors were hired. The case and WPFC's involvement energized a campaign by the

Northern Cypriot Press Union to improve working conditions for all journalists there.

On Oct. 6, 2008, WPFC got a thank you letter from Harman saying that “because of the kind support and valuable contribution of the World Press Freedom Committee, the Turkish Cypriot democracy is more transparent now and the press freedom forces of this country are stronger than ever. Without feeling your presence behind us, this success could have never been completed.”

### **Relevant Laws**

#### **Penal Code of the Republic of Cyprus**

Section 50 (1) of the Penal Code (CAP.154 as amended), makes it a criminal offense punishable by imprisonment for a term of not more than two years or with a fine not exceeding 500 Pounds (or both), for any person to publish false news or information which may impair public order, or the confidence of the public in the State or its organs, or to cause fear or concern to the public, or to disturb in any way public peace and order. It is a defense, however, for the person accused to satisfy the Court that the publication was made in good faith and on the basis of facts justifying such publication.

No criminal proceedings may be instituted under this section without written consent by the Attorney General of the Republic, a constitutionally independent officer, invested with authority under Art. 113 of the Constitution, to exercise control and coordination over the machinery of administration of criminal justice in the public interest.

Other relevant provisions in the Penal Code are those of sections 46A, 47 and 48. Section 46A makes it an offence punishable by a term of imprisonment not exceeding three years to publish orally or in writing, or by any other means, anything which tends to insult or offend the honor of the Head of State. Section 47, taken in conjunction with Section 48 (which defines the term “seditious intention”), makes it an offense punishable with a term of imprisonment not exceeding five years to publish any words or document, or make a visible representation, with a seditious intention, that is with an intention to bring into hatred or contempt, or to incite to sedition against the Government of the Republic, or with an intention to bring about a change in the sovereignty of the Republic.

## FRANCE

Population: 61.4 Million

Press Freedom Rating: Free



### Developments

➔ In March 2008, a court acquitted Philippe Val, the editor-in-chief of the satirical weekly *Charlie Hebdo* after a trial in Paris on charges of “publicly slandering a group of people because of their religion.” The charges, brought by the Paris Mosque and the Union of Islamic Organizations of France, involved the magazine’s reprint of the controversial Danish cartoons of the Prophet Mohammed. Penalty for conviction was a possible six-month prison sentence and a fine of up to US \$28,530. *Charlie Hebdo* ran the drawings in February 2006. The magazine also featured a cover page cartoon of its own showing Mohammed with his head in his hands, crying and saying: “It’s tough to be loved by a-s-holes.”

➔ President Nicolas Sarkozy sought in October 2008 to ban the sale of 20,000 cloth-covered “voodoo dolls” of the French leader in kits with 12 stickpins and a satiric manual on how to use them to hex him, at 13 Euros (approx. US \$17.50) each. On Oct. 29, a three-judge appeals court ruled that the doll was protected by “the right to humor.” But the court fined the dollmaker, K&B Editions one symbolic Euro and ordered the company to pay court costs of 2,000 Euros (approx. US \$2,700).

The appeals court upheld a lower court ruling that a ban would be “disproportionate,” but it ruled that the kits must be sold with stickers saying: “Incitement to spear the doll with the needles provided with the manual, implying the idea of physical harm, albeit symbolically, offends Mr. Sarkozy’s dignity.” The judges said it was not for them to rule on the “good or bad taste of the concept” and that even if it was “deliberately provocative and gross,” it was covered by freedom of expression. Sarkozy’s lawyer said he was satisfied.

The company distributed 12,000 similar kits of Segolene Royal, Sarkozy’s Socialist Party rival in the presidential election of 2007. She said she had no complaints adding, “I have a sense of humor.” K&B said the initial stock had been sold out and that it would distribute another 20,000 bearing the juridical sticker.

There were numerous prosecutions of the crime of insult to the President of the Republic under the founder of the French Fifth Republic, Charles de Gaulle. His three most recent successors, from 1974 to 2007, all refused to invoke the law on their own behalf, but they did not follow calls for its revocation. President, Sarkozy, elected May 16, 2007, has used it several times and also initiated prosecutions for analogous offenses under the French press law of 1881 in his previous position as Interior Minister, although he had then stated: “I prefer the risk of hurt feelings to the risk of censorship. ... Democracy means the possibility of criticism, of debates and of caricatures, especially in drawings. That’s democracy, and it’s not negotiable.”



➔ President Sarkozy caused a stir at the annual French Agriculture Salon in Paris when he was filmed Feb. 23, 2008 reacting to a farmer's refusal to shake his proffered hand. Sarkozy said, "So, get lost, you poor a-s-hole" (*Casse-toi alors, pauvre con*). The scene was widely rebroadcast, eliciting broad media comment on the undignified language.

On Aug. 28, Sarkozy was touring the provinces when his motorcade passed an unemployed man with a small handwritten sign, quoting back the same words, hanging from his bicycle. The man, Hervé Eon, was arrested and charged with insulting the President of the Republic under the 1881 press law. He faced a fine of 45,000 Euros (approx. US \$60,000). The local state prosecutor in the town of Laval sought 1,000 Euros (approx. US \$1,350). A judge ruled on Oct. 23 that Eon should be subjected to a suspended symbolic fine of 30 Euros (approx. US \$40). Eon, a jobless former elected member of a local governing body and self-described as a militant of the left wing of the Socialist opposition, appealed and said he was ready to go all the way to the European Human Rights Court in Strasbourg.

➔ In July 2008, several persons prosecuted on charges of insult, offense or outrage formed an association, the CODEDO (*Collectif pour une dépenalisation du délit d'outrage*- Collective to Depenalize the Infraction of Outrage). It was an initiative of Romain Dunand, a man fined 200 Euros (approx. US \$270) on appeal in November 2008 in a case initiated in 2006 by then-Interior Minister Sarkozy for comparing the current French regime to Vichy France, in an e-mail to the minister. To defend a schoolteacher arrested for organizing a demonstration against the expulsion from France by police of an illegal immigrant with two children in French schools, Dunand had messaged, "So Vichy is back: [Vichy Chief of State] Petain left behind his dogs!"

Another CODEDO founder was French-Colombian social worker Maria Vuillet, charged with "outrage" for having allegedly called a sub-prefect (deputy administrator of a French county-size district) a "fascist" at a demonstration against the mandatory reading in schools of a text, under a controversial order by President Sarkozy. It was a farewell letter by a secondary school student about to be executed by the WW II Nazi occupiers of France. The demonstration was at the executed boy's school. A court dismissed Vuillet's case in September, but the sub-prefect appealed. Other CODEDO founding members included several persons accused of "outraging" policemen. Hervé Eon, the man convicted of quoting back President Sarkozy's words to him, also joined the association.

In December, the CODEDO launched a national petition to abolish the crime of "outrage." The signatures were to be presented to the authorities in September 2009.

➔ "Outrage" charges are most often brought by police against persons who allegedly talk back to them. The National Delinquency Observatory said charges for "outrage" rose from 17,700 in 1996 to 31,800 in 2008. The penalty for "outrage" is up to six months prison and/or a fine of up to 7,500 Euros (approx. US \$10,000) when "persons with a public service mission," like teachers or municipal bus drivers or persons "entrusted with public authority," like policemen or cabinet ministers are involved. In 2000, there were

12,983 convictions for “outrage” and 13,944 (of whom 1,759 were minors) in 2006. About half the convictions were followed in 2006 by jail sentences, mostly suspended, and 2,693 actual jail sentences for “outrage” or public “rebellion” against authority.

A detailed sociological study by Fabien Jobard of the French National Scientific Research Center concluded that young persons arrested for rioting are often charged both with “rebellion” and “outrage” and that the police often have recourse to charges of “outrage” to ward off counter-charges of abuse of power. The independent governmental National Commission of Ethics of Security (*Commission nationale de la déontologie de la sécurité*) created in 2000 said in its 2007 annual report that there had been “an inflation of procedures for outrage undertaken too systematically by security forces personnel.”

### **Relevant Laws**

France’s “Law of July 29, 1881, on Freedom of the Press,” which prescribes punishments for insult to the President, the State, foreign dignitaries and the flag, has survived for generations only lightly touched, and remains as an often imitated model for authoritarians around the world. Unwilling to relinquish protection from public scrutiny, such officials have noted the continued existence of the French law, saying in essence, “If France has such a law, why not us?”

There have been modest reforms to France’s law in recent years. For example, the “Guigou Law” in 2000 abolished jail terms for press offenses such as defamation and insults.

In February 2004, Parliament repealed the offense of “insulting a foreign head of state,” abrogating Art. 36 of the Press Law. However, Art. 26, protecting France’s head of state from insult, still stands.

Later in 2004, Parliament again amended – and tightened – the 1881 law, introducing new offenses including incitement to hatred and violence, and defaming or insulting “a person or group of people because of their sex or sexual orientation or their disability,” – punishable by up to a year in prison and a fine of 45,000 Euros (approx. US \$58,000).

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

**Art. 26:** Offense of the President of the Republic by one of the means enumerated in Art. 23 is punishable by a fine of 45,000 Euros (approx. US \$58,000). (Art. 23, which deals with incitement to a crime or misdemeanor, lists the following means: “by speech, cries or threats made in public places or public meetings, by writings, printed materials, drawings, engravings, paintings, insignia, images or any other medium for writing, words or images, sold or distributed, offered for sale or displayed in public places or public meetings, [and] by bills or posters exposed to public sight.”)

**Art. 30:** “Defamation by one of the means listed in Art. 23 of the courts, the armed forces, established bodies and public administrations,” is punishable by a fine of 45,000 Euros (approx. US \$58,000).

**Art. 31:** The penalties listed in Art. 30 apply to defamation directed at 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 (modified Dec. 30, 2004):** Defamation committed toward private individuals by one of the means listed in Art. 23 will be punished by a fine of 12,000 Euros (approx. US \$15,500).

Defamation committed by the same means toward a person or group of persons because of their origin or their ethnic, national, racial or religious membership will be punished by imprisonment and/or a fine of 45,000 Euros (approx. US \$58,000). The same punishment applies to defamation committed against a person or group because of gender, sexual orientation or physical disability.

**Art. 35:** “The truth of the defamatory fact, solely if it relates to their functions, can be established by normal means in cases of allegations against established bodies, the armed forces, public administrations and against all of the persons listed in Art. 31. The 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. 48:** “(1) In case 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 of the minister to whom the body is attached. (2) In case of insult or defamation of one or more members of either House of Parliament, prosecution shall take place only upon the complaint of the person or persons concerned. (3) In case 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 case of defamation of a juror or witness, as provided in Art. 31, prosecution shall take place on the complaint of the juror or witness who claims he was defamed. (5) In case of offense of heads of state, or insult of foreign diplomats, prosecution shall take place after their request to the Minister of Foreign Affairs and its referral by him to the Minister of Justice.”

## GREECE

Population: 11.1 Million  
Press Freedom Rating: Free

### Developments

→ Nikitas Lionarakis was a journalist and presenter of a radio program on politics, broadcast live on public radio ERT. In 1999, during a debate on Greek foreign policy, a guest on his show criticized certain public personalities. Lionarakis was held liable for insult and defamation because, as the program's coordinator, he should have prevented or at least interrupted the controversial statements. He was fined more than US \$51,000.



On July 5, 2007, the Strasbourg-based European Court of Human Rights ruled in the case of *Lionarakis v. Greece* that holding the journalist and coordinator of a radio program liable for the statements of a speaker on his program violated freedom of expression.

The Court held unanimously that there was a violation of Art. 6 (section 1: right to a fair hearing) and Art. 10 (freedom of expression) of the European Human Rights Convention. The Court considered that the journalist and coordinator of a live program on politics could not be held liable like the person who had made the defamatory statement. The Court also criticized the minimum threshold for compensation in the Greek law.

### Relevant Laws

#### **Penal Code**

**Art. 153(b):** One who . . . publicly attacks the honor of the head of a foreign state which is at peace with the Greek State and is recognized by it shall be punished by imprisonment unless the offense is subject to greater punishment under other provisions, provided that reciprocity of punishment is guaranteed and was guaranteed at the time of the commission of the offense. Prosecution shall commence only at the request of the foreign government.

There is a six-month statute of limitations. Truth is not a defense.

**Art. 154:** Publicly attacking the honor of “an accredited ambassador to the Greek State or other diplomatic representative of a foreign state shall be punished by imprisonment for not more than two years unless the offense is subject to greater punishment under another provision of the statute. Prosecution shall commence only on the complaint of the victim or at the request of his government.”

**Art. 168:** (2) One who attacks the honor of the President of the Republic or one exercising the power of the President of the Republic, or defames him publicly or in his presence, shall be punished by imprisonment for not less than three months. There is a six month statute of limitations.

**Art. 361:** (1) Insult. Except in cases which amount to defamation (Arts. 362 and 363), one who by words or by deeds or by any other means injures another's reputation shall be punished by up to one year imprisonment and/or a fine.

(2) If the injury to reputation is not severe, considering the circumstances and the person injured, the offender shall be punished by jailing or fine.

**Art. 361A:** (1) An insult committed through an act (Art. 361(1)) is punished by imprisonment of at least three months if it was unprovoked by the victim. (2) If two or more persons participated in the insulting act, it will be punished by imprisonment of at least six months.

**Art. 362:** Defamation. One who by any means asserts or disseminates information to a third party concerning another that may damage his character or reputation shall be punished by up to two years imprisonment and/or a fine.

**Art. 363:** Aggravated defamation. If in a case under Art. 362, the information is false and the offender was aware of the falsity thereof, he shall be punished by imprisonment for not less than three months, and, in addition, a fine and deprivation of civil rights may be imposed.

**Art. 364:** (1) One who by any means asserts or disseminates information concerning a corporation with respect to its business, financial condition, product or members of its board of directors that may lower the confidence of the public in the corporation and generally injure its business shall be punished by imprisonment for not more than one year or a fine. (2) If the accused proves the truth of the information that he asserted or disseminated, he shall not be punished. (3) If the information that the accused asserted or disseminated is false and he was aware of the falsity thereof, he shall be punished by imprisonment.

**Art. 365:** One who disparages the memory of a deceased person by rude or malicious insult or by aggravated defamation (Art. 363) shall be punished by imprisonment for not more than six months.

**Art. 366:** (1) If the information described under Art. 362 is true, the act shall not be punished, but proof of truth shall not be admitted if the information concerns solely family or personal relationships that do not affect the public interest and if the assertion or dissemination was done maliciously. (2) In cases under Arts. 362, 363, 364 and 365, if the information that the accused asserted or disseminated discloses a criminal act that is prosecuted, the defamation trial shall be suspended until the termination of such prosecution, and subsequently the truth of the information shall be deemed proved by a conviction and its falsity by an acquittal based upon failure of proof of commission of such criminal act by the person defamed. Proof of truth of defaming information shall not preclude punishment for insult, provided that intent to insult is apparent from the conduct or circumstances under which it occurred.

**Art. 367:** (1) Disapproving criticisms of scientific, artistic or occupational developments, or such criticisms that appear in a public document issued by an authority concerning the activities of such authority, or such criticisms for the purpose of fulfilling lawful duties, the exercise of lawful authority or protecting a right or some other justified interest, or such criticisms in similar cases shall not constitute an unjustified act. (2) This provision shall not apply when the above criticisms constitute the essential elements of an offense under Art. 363 or intent to insult is apparent from the manner of criticism or the circumstances under which it occurred.

**Art. 368:** (1) In cases under Arts. 361, 362, 363, 364 and 365, criminal prosecution shall be initiated only upon a complaint. (2) In a case under Art. 365, the right to file a complaint lies with the surviving husband, wife and children of the deceased person and, if such do not exist, the parents, brothers and sisters of the deceased person. In a case under Art. 364, the right to file a complaint lies with the board of directors and any person with a legal interest in the matter. (3) If the injured person is a civil servant and the offense occurred during his tenure in office or for reasons related to such tenure, his official superior and the competent minister shall also have the right to file a complaint.

**Art. 369:** Requires publications of judgments in favor of plaintiffs in insult and defamation cases. If a newspaper or periodical found guilty of insult or defamation fails to publish the judgment in accordance with the law, the editor may be punished by up to one year imprisonment or a fine.

## POLAND

Population: 38.1 Million

Press Freedom Rating: Free

The Constitution bans censorship and guarantees freedom of the press. But libel and some forms of insult -- including defamation of officials, the state, and constitutional institutions -- are punishable by fines and up to two years in prison.



### Developments

➔ A Polish court in 2008 ruled it was not libelous to refer to President Lech Kaczynski as a duck (a pun on “*kaczka*,” meaning “duck”) and his use of a duck to symbolize his Law & Justice Party). The judge said comparing humans to animals is not necessarily insulting.

➔ In a case continued from 2006, Andrzej Marek, chief editor of the weekly *Wiesci Polickie*, had his appeal blocked by the courts. Marek was convicted of criminal defamation and insulting a local official. The charges were over articles in *Wiesci Polickie* in February 2001 accusing Piotr Misilo, spokesman of the Promotion and Information Unit of the Police City Council, of getting his job by blackmail and of using his position to promote his private advertising agency. Marek was sentenced to three months in jail but released after two days when the Constitutional Court suspended his sentence. Later in 2006, however, the Court upheld a ruling that defamation is a criminal offense, meaning Marek could be returned to jail. An appeal was halted by the Court, meaning Marek’s only chance to avoid prison was a presidential pardon. A June 25, 2007 Court decision called for Marek’s imprisonment, making Poland the first European Union country to jail a journalist for criminal defamation.

➔ Spanish daily newspaper *El País* and a Catalan feminist were charged in June with insulting Poland -- the first time the law was used. The charges involved a March 17, 2007 article titled, “Poland still freezes the soul.” Spanish ex-parliamentarian Pilar Rahola wrote that Polish democracy suffers from Catholic Church influence and from homophobia and racism.

### Relevant Laws

#### Penal Code

**Art. 135:** 1. Whoever commits an active assault on the President of the Republic of Poland shall be subject to the penalty of the deprivation of liberty for a term of between three months and five years.

2. Whoever insults the President of the Republic of Poland in public shall be subject to the penalty of the deprivation of liberty for up to three years.

**Art. 136:** 1. Whoever on the territory of the Republic of Poland, commits an active assault upon the head of a foreign State, upon the head of the diplomatic representation of

a foreign State, who is accredited to the Republic of Poland, or upon a person enjoying similar protection by virtue of law, treaty or generally accepted international custom, shall be subject to the penalty of deprivation of liberty for a term of between three months and five years.

2. Whoever on the territory of the Republic of Poland, commits an active assault upon a person belonging to the diplomatic personnel of a mission of a foreign country to Poland, or on a consular official of a foreign country in connection with the performance of their official duties shall be subject to the penalty of the deprivation of liberty for up to three years.

3. Whoever on the territory of the Republic of Poland insults the person referred to in [Para.] 2, in public, shall be subject to the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.

**Art. 137:** Penalizes public defamation, destroying, damaging or removal of an emblem, banner, standard, flag, ensign or other symbol of the State and provides for that offense a fine, restriction of liberty or deprivation of liberty for up to one year. The second paragraph similarly penalizes such actions against symbols displayed by other nations' missions in Poland.

**Art. 226:** Provides penalties for defaming a public official in connection with his official duties.

**Art. 270:** Sanctions insult against the Polish nation, its political system or its principal organs. Penalty: from six months to eight years in prison. If the crime is committed in print or through the mass media, the punishment is one to ten years imprisonment.

**Art. 212:** 1. Whoever imputes to another person, a group of persons, an institution or organizational unit not having the status of a legal person, such conduct, or characteristics that may discredit them in the face of public opinion or result in a loss of confidence necessary for a given position, occupation or type to activity shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.

2. If the perpetrator commits the act specified in (Para. 1) through the mass media shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to two years.

3. When sentencing for an offense specified in (Paras. 1 or 2), the court may levy a supplementary payment in favor of the injured person or of the Polish Red Cross, or of another social purpose designated by the injured person in a supplementary payment.

4. The prosecution of the offense specified in (Paras. 1 or 2) shall occur upon a private charge.

**Art. 226:** 1. Anyone who insults a civil servant or a person officially assisting him during or in connection with carrying out of his official duties is liable to a fine, to restriction of personal liberty or up two years imprisonment.

2. Anyone who insults or abases a constitutional organ of the Republic is liable to a fine, restriction of personal liberty or up to two years imprisonment.



## ROMANIA

Population: 21.6 Million

Press Freedom Rating: Partly Free

The Constitution protects freedom of the press, and the government has become increasingly respectful of these rights. A law passed in 2006 decriminalized defamation and similar offenses, meaning journalists would no longer face imprisonment for defamation. However, the Constitutional Court overturned the measure in early 2007, reinstating defamation and libel in the Penal Code.



### Developments

➔ In mid-2006, the Minister of Justice at the time had a human rights and NGO background, and Romania completely decriminalized defamation, abolishing the two articles that dealt with ‘insult’ and ‘calumny’ in the old Penal Code, Arts. 205 and 206. In January 2007, however, the Constitutional Court ruled that to be unconstitutional and ordered reinstatement of the two articles in the Penal Code. To date, Parliament has taken no measures to implement the decision, but some legal experts consider that the Court ruling has effectively reinstated the relevant provisions.

### Relevant Laws

#### **Recent Constitutional Court Decision**

On the issue of constitutionality of the provisions of the Art. I, Para. 56 of the Law no. 278&2006 on amending and adding to the Penal Code  
Published in the Official Gazette no. 104 of 12 Feb. 2007:

We are called to judge on the constitutionality of the provisions of Art. I, Para. 56 of the Law no. 278&2006 on amending and adding to the Penal Code as well as on amending and adding to other laws, issue brought before the Court by Mihaela Marza, Sofia Tambalaru and Elena Iulia Stefanescu, respectively.

In the reasoning of the claim of unconstitutionality, Mihaela Marza states that the abrogation of the Arts. 205 and 206 of the Penal Code breaches the provisions of Arts. 16, 20 and 21 of the Constitution. Sofia Tambalaru argues that the abrogation of the Arts. 205 and 206 violates the Art. 21 of the Constitution, as it “makes impossible for the magistrates to contest under the penal code the libeling activities of some journalists who, by defamatory articles, result in damages to the magistrate’s image, therefore it is impossible to keep a just balance between the State’s general interest to preserve the image of the Justice and the magistrates’ right to defend their dignity and honor. Elena Iulia Stefanescu argues that, as long as there is no legislation to regulate and sanction the media offenses, according to the provisions of Art. 30, Para. (8), last thesis of the Constitution, the abrogation of the Arts. 205 and 206 of the Penal Code created a

legislative void that resulted in depriving the victims of defamation though the media of their juridical protection.

**The Government** communicated their point of view, stating that the unconstitutionality claim is not grounded and showing that the contested legal text does not create any discrimination, is in full compliance with the treaties and conventions in which Romania is a signatory party and does not limit the free access to Justice.

**The Ombudsman** considered that the unconstitutionality claim is not grounded, because the contested legal provisions do not violate the cited constitutional provisions invoked by the plaintiffs.

**The court retains:**

The object of the unconstitutionality claim is the provisions of Art. 1, Para. 56 of the Law no. 278&2006 on amending and adding to the Penal Code as well as on amending and adding to other laws, published in the *Monitorul Oficial al Romaniei* (Official Gazette of Romania) Part I, no. 601 of 12 July 2006, with the following content:

“The Arts. 205, 206, 207 and 236 are abrogated.”

Analyzing the unconstitutionality claim, the Court finds that it is grounded and is going to be admitted, based on the following considerations. The provisions of Arts. 205, 206 and 207 of the Penal Code, abrogated through Art. I, Para. 56 of the Law 278/ have the following content:

**Art. 205: Insult**

Offending the dignity or the reputation of a person through words, gestures or any other means, or by exposing them to mockery, shall be punished by fine.

The same punishment is applicable when a person is attributed a defect, a disease or disability that, even if they were real, should not be revealed.

The penal action starts by prior complaint of the affected person.

Agreement between the parties [to a lawsuit eliminates] penal responsibility.

**Art. 206: Calumny**

Asserting or reproaching publicly, through any means, of a certain act degrading a person that, if it were true would expose that person to a penal, administrative or disciplinary sanction or to public contempt, shall be punished by fine from 2,500,000 to 130,000,000 lei (approx. US \$800,000 to \$41 million).

## SLOVENIA

Population: 2 Million

Press Freedom Rating: Free

The Slovenian constitutional and legal system guarantee freedom of the press and these rights are largely protected in practice. Libel remains a criminal offense in Slovenia, although not punishable by prison terms.

### Developments

→ Slovenian police summoned journalist Biserka Karneza Cerjak for questioning Nov. 24, 2008, following criminal defamation allegations against her by Bojan Srot, mayor of Slovenia's third largest city and leader of the Slovene People's Party (SLS). The allegations relate to a May 2008 *Reporter* magazine item. In the article, Karneza Cerjak made allegations concerning Srot's business activities.

Although most European Union countries retain some form of criminal defamation legislation, such laws are rarely used. Appeals to national press councils or civil proceedings are preferred. In the case of Karneza Cerjak, however, Srot bypassed both the Slovenian Journalists' Court of Honor and any form of civil redress.

→ In October 2008, then-Prime Minister Janez Janša filed criminal charges against Magnus Berglund, a Finnish journalist in Slovenia, for alleging his involvement in a corruption scandal.

The charges stem from the Sept. 1, 2008 broadcast of a segment entitled "The Truth about Patria," by Finnish public broadcaster YLE, alleging that members of the Slovenian government, including Janša, accepted bribes from a Finnish defense contractor. Janša vehemently denied the allegations. Berglund, a journalist for YLE, authored the report.

In September, the Slovenian government used diplomatic channels to exert pressure on the Finnish government in response to the broadcast, sending a diplomatic note to the Finnish Embassy in Slovenia warning that the documentary "could shake mutual confidence between the two states."

→ In February 2008, a group of Slovenian citizens filed criminal defamation charges against the journalists who initiated a 2007 petition against government interference in the media, claiming that the petition defames the Slovenian Republic, has damaged Slovenia's good reputation, and has inflicted political and material damage on the State.

The "Petition Against Censorship and Political Pressures on Journalists in Slovenia" was initiated in September 2007 by journalists Blaz Zgaga and Matej Surc and signed by 571 journalists. It stressed their concerns over political pressures exerted on Slovenian media.



➔ A government-backed bill containing sweeping reforms to the Slovene penal code was introduced to the Slovene Parliament on Jan. 28, 2008. The controversial proposal includes provisions expanding liability for criminal defamation, holding both authors and editors or publishers responsible for published material deemed defamatory.

The bill was accorded “urgent” status, and was fast-tracked through the Slovene National Assembly, where it passed its third reading on April 24, despite criticisms by various political parties and legal and media experts.

In a final effort to prevent the bill from becoming law, the Slovene National Council on April 29, returned the proposed package of amendments to the National Assembly for a revote, on the basis that the package was accepted “without the consensus of legal experts,” that the “broader public opposes such drastic changes to criminal legislation,” and that it was “accepted too fast, and without a real necessity for such changes.” The Council also warned that the reforms signaled a swing to “authoritarian” and “repressive” practices. The National Council’s decision obliged the National Assembly to vote once more and to give it an absolute majority for it to become law. In a revote on May 20, the National Assembly reenacted the law by 49 of a possible 90 votes.

### **Relevant Laws**

#### **Penal Code Chapter 18: Offenses against Honor and Reputation.**

Five basic criminal offenses involving various types of attack against the honor and reputation are defined.

Two alternative penalties of a fine or a prison sentence (of varying lengths) are always provided for. All criminal offenses listed below are committed against individuals; however, the criminal offenses of insult, slander or defamation can be committed against legal entities or bodies, which are not legal entities (for example, state authorities) as well. For any of the first five types of criminal offense from this chapter, prosecution is instigated upon the filing of a private motion. When such actions are committed against a state body or official or a military official in connection with the performance of their office in an individual body, prosecution is instigated at the initiative of the injured party in the case in question. In these cases, prosecution is carried out *ex officio*, but only provided the injured party has filed a complaint.

#### **Art. 169: Insult**

- 1) Whoever insults another shall be punished by a fine or sentenced to imprisonment for not more than three months.
- 2) If the offense under the preceding paragraph has been committed through the press, radio, television or other means of public information or at a public assembly, the perpetrator shall be punished by a fine or sentenced to imprisonment for not more than six months.
- 3) Whoever expresses words offensive to another in a scientific, literary or artistic work, in a serious piece of criticism or in the exercise of an official duty, in a piece of journalism, in the course of political or other public activity or in the defense of justified benefits, shall not be punished, provided that the manner of expressing such words or and

that the other circumstances of the case indicate that his expression was not meant to be derogatory.

**Art. 170: Libel**

- 1) Whoever asserts or circulates anything false about another person which is capable of damaging his honor or reputation and which he knows to be false shall be punished by a fine or sentenced to imprisonment for not more than six months.
- 2) If the offense under the preceding paragraph has been committed through the press, radio, television or other means of public information or at a public assembly, the perpetrator shall be punished by a fine or sentenced to imprisonment for not more than one year.
- 3) If that which has been asserted or circulated is of such a nature that it may bring about grave consequences for the slandered person, the perpetrator shall be punished by a fine or sentenced to imprisonment for not more than three months.

**Art. 171: Defamation**

- 1) Whoever asserts or circulates anything false about another person who is capable of causing damage to the honor or reputation of that person shall be punished by a fine or sentenced to imprisonment for not more than three months.
- 2) If the offense under the preceding paragraph has been committed through the press, radio, television or other means of public information or at a public assembly, the perpetrator shall be punished by a fine or sentenced to imprisonment for not more than six months.
- 3) If what has been asserted or circulated is of such a nature that it may bring about grave consequences for the defamed person, the perpetrator shall be punished by a fine or sentenced to imprisonment for not more than one year.
- 4) If the perpetrator proves either the truth of his assertions or that he had reasonable grounds to believe in the truthfulness of what has been asserted or circulated, he shall not be punished for defamation but may be punished either for insult (Article 169) or for falsely and scornfully accusing someone of a crime (Article 173).
- 5) The truthfulness of any assertion that a person has committed a criminal offense for which the perpetrator is prosecuted *ex officio* may only be proved by means of a final judgment. Other evidence may be allowed to prove such an assertion only when prosecution or trial before a court is not possible or permitted.
- 6) If the defamation asserting that the injured person has committed a criminal offense, for which the perpetrator is prosecuted *ex officio*, has been committed in circumstances under the third Para. of Art. 169 of the present Code, the perpetrator shall not be punished for defamation even without the existence of a final judgment if he can prove that he had a justified reason to believe that what he had been asserting or circulating was true.

**Art. 172: Calumny**

- 1) Whoever asserts or circulates any matter concerning the personal or family affairs of another person, which is capable of injuring that person's honor and reputation, shall be punished by a fine or sentenced to imprisonment for not more than three months.
- 2) If the offense under the preceding paragraph has been committed through the press, radio, television or other means of public information or at a public assembly, the

perpetrator shall be punished by a fine or sentenced to imprisonment for not more than six months.

3) If what has been asserted or circulated is of such a nature that it may bring about grave consequences for the defamed person, the perpetrator shall be punished by a fine or sentenced to imprisonment for not more than one year.

4) Except in cases under the paragraph below, it shall not be permitted to ascertain in court whether what has been asserted or circulated is true or false.

5) Whoever asserts or circulates any matter concerning the personal or family affairs of another in the exercise of official duty, political or other public activity, the defense of any right or the protection of justified benefits, shall not be punished, provided that he proves either the truth of his assertions or that he had reasonable grounds for believing in the truthfulness of what has been asserted or circulated.

**Art. 174: Disparagement of the Republic of Slovenia**

In addition to the Republic of Slovenia, protection against this type of criminal offense is enjoyed by the President of the Republic only and not by other top bodies or their representatives; these are guaranteed protection within the provisions on basic criminal offenses. If a criminal offense under Art. 174 of the Penal Code has been committed, the prosecution is instigated *ex officio*.

**Art. 175: Disparagement to a foreign country or international organization**

Foreign countries, international organizations and their representatives and symbols are afforded the same protection as the Republic of Slovenia and its President; prosecution for such criminal offenses can only be instigated by the public prosecutor with the permission of the minister of justice.

**Art. 176: Disparagement of the Slovene people or national communities**

This Article provides that whoever publicly commits any of the offenses under Arts. 169 to 173 against the people of Slovenia or against the Hungarian or Italian national communities in the Republic of Slovenia, shall be punished by a fine or prison sentence of not more than one year.

## SPAIN

Population: 44.1 Million  
Press Freedom Rating: Free



### Developments

→ On Dec. 18, 2007, Spanish judge José Guerrero Suárez acquitted Francisco Rosell, the editor-in-chief of the Andalusian edition of *El Mundo*, and the newspaper's chief copy editor, Javier Caravallo, of charges of criminal defamation. The charges related to an article which concerned alleged high-level corruption in the Andalusian local government. A group of plaintiffs was led by the President of the autonomous government, Manuel Chaves, and fines and damages approaching US \$3 million were sought.

On Dec. 6, 2007, the WPFC wrote Andalusian President Chaves, with copies to Judge Herrera Suárez and a long list of officials and media outlets. Noting that the charges were an attack on press freedom, WPFC stressed that the plaintiffs not only tried to muzzle the journalists by indicting them as common criminals but that they also tried to deny readers the right to be informed on matters of public interest. WPFC recalled that the basic rights involved are guaranteed by the Spanish Constitution and by case law of the European Human Rights Court, as well as recommendations of the UN Human Rights Commission

Judge Herrera Suárez's Dec. 18 ruling cited the case law that WPFC brought to his attention in this letter, namely the European Human Rights Court's interpretation of Art. 10 of the European Human Rights Convention: that freedom of expression takes precedence over personal honor when the facts reported are truthful and of public interest.

→ In July 2007, two cartoonists of the satirical weekly magazine *El Jueves* faced criminal defamation charges for a cartoon on the magazine cover showing Crown Prince Felipe and his wife Letizia engaged in a sexual act. The cartoon was targeted at a government policy, known as the "cash for babies" program, to promote larger families. The cartoon had the prince telling his wife, "If you get pregnant, it will be the closest I've ever come to knowing what work feels like."

A Spanish judge said the cartoon insulted the royal family and undermined its reputation. The magazine was seized, and the cartoonists, Guillermo Torres and Mantel Fontdevilla, charged. Torres and Fontdevilla were ultimately convicted in November, and both received a fine of approximately US \$4,000. Both cartoonists said they would appeal.

→ José Luis Gutiérrez, former chief editor of the now defunct *Diario 16*, filed a case against Spain at the European Court of Human Rights in April 2007, over charges that the newspaper had violated Moroccan King Hassan II's "right to maintain his honor." The original conviction involved an article in *Diario 16*, reporting discovery of five tons of hashish in a truck belonging to the Moroccan Crown. Despite the accuracy of the facts, Gutiérrez was charged under two laws which, according to a May 3 WPFC press release,

were “inherited or adapted from the Franco dictatorship” and “place the burden of proving truth or falsity upon the defendant.” The case is on appeal to the European Human Rights Court, where a ruling for Gutiérrez would set a major precedent.

### **Relevant Laws**

In 1995, Spain amended its Criminal Code to make it consistent with the Constitution that had gone into effect in 1978. Among the changes was the elimination of Articles 240 to 245, which had defined disrespect (*desacato*) as defaming, offending, insulting or threatening, by word or deed, public officials in the performance of their duties or because of their duties. The 1995 Criminal Code retains provisions covering insult (*injuria*) and calumny (*calumnia*) of the Royal Family, the government, certain government institutions and the army.

#### **1995 Criminal 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 10 months.

**Art. 207:** One accused of the crime of calumny shall be exempt from all penalties by proving 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 proper 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, and in other cases, by a fine of three to seven months.

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

**Art. 211:** Calumny or insult will be considered done with publicity when spread by the print media, broadcasting or any other medium having 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. 215:** (1) No one shall be punished for calumny or insult except by virtue of a complaint by the person offended by the crime or his legal representative. An accusation shall be sufficient when the offense is directed against a public official, authority or an agent of the same, over acts concerning the exercise of his duties.

**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 if the calumny or insult is not grave.

**Art. 491:** (1) Calumnies and injuries against any of the persons mentioned in the previous article and which meet the requirements of that article, shall be punished with a fine of four to 20 months. (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.

**Art. 504:** Calumny, insult or grave threats to the Government of the Nation, the General Council of Judicial Power, the Constitutional Court, the Supreme Court, or the Council of Government or the Superior Court of Justice of an Autonomous Community shall be punished by a fine of 12 to 18 months. The exemptions provided in Arts. 207 and 210 apply to calumny and insult covered in this article.

**Art. 505:** Those who insult or seriously threaten the Armies, Classes or Corps and Security Forces shall be punished with a fine of 12 to 18 months. The exemptions provided in Art. 210 apply to insults covered in this article.

## TURKEY

Population: 73 Million

Press Freedom Rating: Partly Free



### Developments

→ On April 30, 2008, the Turkish Parliament approved changes to Art. 301 limiting offenses to those that insult the “Turkish nation” rather than “Turkishness.” They also reduce the maximum penalty from three years to two, and make it more difficult to prosecute cases since charges may only be brought by the Minister of Justice.

But comments seen as “insulting” to state institutions, such as the judiciary, the military and even individual officials, may still be punished by prison terms of up to two years.

→ In September 2008, a writer was jailed for a book he wrote about women, and he and his publisher face additional charges for the same book. Two sets of criminal charges were filed over the book, *Language of Suffering: Woman*, by Murat Coskun, issued by Peri publishers in January 2002. Istanbul High Criminal Court No. 12 condemned Coskun to 12 months, 15 days in jail for “inciting hatred and hostility among the people.”

The other charge concerning the book was for “insulting the armed forces.” Coskun and the owner of Peri publishers, Ahmet Önal, were both accused of the offense. The case was sent to the Ministry of Justice for special consideration.

→ On June 17, 2008, an Istanbul court ruled on the case of Ragip Zarakolu, the owner of Belge Publishing. He was tried for denigrating the State and the Republic and insulting the memory of Kemal Atatürk, the founder of modern Turkey, for publishing George Jerjian’s book, *History Will Set Us Free*. Zarakolu was convicted of the first charge and acquitted of insulting Atatürk.

Considering his “good behavior,” the court first reduced Zarakolu’s sentence from six months to five, and then converted the prison sentence to a fine. Had Zarakolu been found guilty of insulting Atatürk, he would have been sentenced to 7.5 years in prison.

The case leading to Ragip Zarakolu’s conviction was initiated in December 2004 for publishing London-based author George Jerjian’s book. The first hearing of the case was in Istanbul on March 16, 2005. There were more than 10 hearings. Zarakolu was originally charged under Art. 159, which criminalizes acts that insult or belittle various state institutions. This article was abolished in 2005 and replaced by Art. 301. In some cases, defendants being tried under Art. 159 had their cases closed, but not Zarakolu.

→ In May 2008 and September 2007, Turkish courts ordered Internet Service Providers to block video-sharing web site YouTube over videos allegedly insulting President

Abdullah Gül, Prime Minister Recep Tayyip Erdogan, the army and Turkish republic founder Atatürk. The national news agency Anatolia said the court asked the Turkish Council for Communications to ensure that access to YouTube was blocked. The court issued its ruling in response to a complaint by a resident of the city of Sivas.

Anatolia reported that YouTube stated that it would cooperate with the authorities. Access to YouTube was previously blocked by a court order in March 2007, and was unblocked again following removal of videos considered insulting to Atatürk.

➔ In March 2008, an Izmir court sentenced Prof. Atilla Yayla to a suspended 15-month prison sentence for saying that Kemalism was “more regressive than progressive.” He was sentenced under the Turkish law protecting the memory of Atatürk.

The court announced the sentence for Yayla over comments he made at a conference titled “Social Effects of Relations Between the European Union and Turkey.” In his talk, Yayla referred to Atatürk as “that man,” an expression that sufficed to have him suspended from his university post and to have charges brought against him.

The court said, however, that the sentence was ultimately based on a different statement, in which Yayla said that “Kemalism corresponds more to regression than progression.” The Izmir Bar Association, the Atatürk Foundation and others joined as plaintiffs.

According to the court, a journalist from *Yeni Asir* newspaper, Nuray Kaya, asked Yayla: “Have I understood you correctly, that Kemalism corresponds more to regression than progression?” Yayla answered, “Yes, you heard correctly . . . In years to come, people will ask us why we have statues and photos of that man everywhere; you cannot cover this up; in the end it will be discussed.”

Yayla was placed on two years’ probation. After sentencing, Yayla told *The Guardian*, he would now face further problems at the university.

➔ Faruk Aktas, owner of the regional *Mus News* newspaper, sentenced to prison for one year, nine months for alleging the involvement of former Mus Vice-Governor Ibrahim Küçük in corruption, was released after only two nights and a day, when a court reviewed his case under the new Turkish Penal Code and pronounced him not guilty.

Aktas was taken into custody in Istanbul Feb. 12, 2008, after an identity check showed that he had an outstanding prison sentence. He was convicted on April 14, 2004 of “insulting an official institution via the media,” under Art. 264/2 of the old Turkish Penal Code. He was initially sentenced to 18 months. He was subsequently also convicted of violating Art. 80, and his sentence was increased to one year, nine months.

Aktas was convicted for two articles he wrote; the first was titled, “Robbery in the Province, Profiteering in the District.” The second article, published Sept. 30, 2003, was titled, “They only help their friends.”

His case was reopened after the court decided to consider the case under the new Turkish Penal Code, which came into effect on June 1, 2005. The court released him Feb. 14.

➔ In February 2008, the Dogan media group filed suit against the nationalist *Halka ve Olaylara Tercüman* (“Interpreter of the People and Events”) newspaper for making two of its female journalists, Perihan Magden and Ece Temelkuran, public targets of hatred.

The media group’s lawyers demanded prosecution of editor-in-chief Ufuk Büyükcelebi and editor Mustafa Dolu for unattributed articles allegedly insulting and vilifying Magden and Temelkuran of the Dogan Media group’s newspapers *Radikal* and *Milliyet*.

The controversy followed an incident in which a group of high school students drew a Turkish flag in their own blood and sent it to the Chief of General Staff Büyükanıt, who showed it to journalists in January, expressing pride in the children. *Halka ve Olaylara Tercüman* distributed promotional copies of this flag to its readers.

Magden wrote a column Jan. 15, titled “Flag of Blood,” condemning a militarist, war-mongering and violent atmosphere that inspired the children, as well as Büyükanıt’s reaction. Temelkuran’s article of Jan. 18, titled “Bloodflag, Flagblood,” said: “If only this noise, which makes flags out of children and dead children out of flags, would end.”

*Halka ve Olaylara Tercüman* reacted with two articles. Jan. 18, it headlined: “Answer this ugly woman,” A sub-head read, “This is the woman who insults children and martyrs.” Jan. 19, it headlined, “These women have lost their way,” with the two journalists’ photos and a text saying: “While reactions against the flag-enemy Magden are continuing, another ugly [person] has emerged. Ece Temelkuran has also had the cheek to insult the Turkish flag and has committed a crime . . . Reactions continue to flood in against *Radikal* newspaper journalist Perihan Magden, whose name has been associated with polemics recently, and her ugly words, which are remote from a Turkish identity.”

➔ After questioning expenditures by a district governor in the Devrek district of Zonguldak, journalist Ibrahim Tig, who writes for *Bölge Haber* (“Regional News”), faced a five-year long trial before being acquitted Jan. 30, 2008.

Tig was charged with insulting Alper Orkun and faced a possible sentence of two years’ imprisonment. In an article titled “The Sarar brand suit,” he wrote: “The Bey of Devrek has bought two of his guards and an administrator suits of the Sarar brand. Apparently they cannot stop praising our Bey anywhere. We are not surprised by the praise of the administrator who does not spend one evening without whisky and who has ensured that his son gets food support from the foundation. One cannot help but wonder at the special treatment of his son. Indeed, while hungry people in need of help cannot get this support . . . I ask the Bey, did he pay for those suits with his own money or with money from the foundation? If he answers, I will inform you, our dear readers.”

The Devrek Penal Court decided on Jan. 30 that Tig had not intended to insult the governor. The prosecutor called for the journalist's acquittal because the text was within the acceptable limits of journalism and criticism.

➔ Two political cartoonists, Musa Kart and Zafer Temocin, of the newspaper *Cumhurryet*, were investigated for unflattering cartoons of the President. The two were charged with violating criminal code Art. 299, which prohibits defaming the President of the Republic. If found guilty, the cartoonists could be sentenced to up to four years in prison. The Minister of Justice initiated the investigation. Both cartoonists went to court for a preliminary hearing and were awaiting further actions by the Ministry of Justice.

The cartoon Kart drew showed the president as a scarecrow in a cornfield claiming powerlessness over the actions of his 16-year-old son. The son is involved in commodities (corn) trading. Kart's cartoon was published on Nov. 28, 2007. In Temocin's cartoon, printed a day later, the President was pictured sitting in a money-filled envelope held by an Arabian prince.

➔ In December 2007, writer Perihan Magden was given a 14-month suspended prison sentence for reporting on what people said about Aytac Akgül when Akgül was the governor of Yüksekova district. She was convicted of insulting Akgül in an article in the weekly *Aktüel* magazine on Feb. 7, 2006, titled "The (Arrogant) Woman is the Wolf, the Fox, the Turkey of Women: She Eats and Finishes," in which she described what people said to her about Akgül when she visited the area.

Akgül has since become district governor in the Bulanik district of Mus, also in the southeast of Turkey, where the trial was initially held. The Bulanik Chief Prosecutor said in his May 2006 indictment that the expressions Magden used were "an insult to a civil servant due to their position."

The Bulanik Criminal Court of Peace accepted Magden's lawyer's demand that the case be transferred to the Istanbul Second Penal Court. That court sentenced Magden Dec. 4, 2007, arguing that the content of the article exceeded acceptable criticism.

➔ On Oct. 11, 2007, an Istanbul criminal court sentenced Arat Dink, editor of the Armenian-Turkish magazine *Agos*, and Sarkis Serkopyan, the magazine's license owner, to one-year suspended prison terms. They were convicted under Art. 301 of "insulting Turkishness" for a 2006 report in which Dink's father, Hrant Dink, referred to the mass killings and disappearances of Armenians in Turkey around 1915 as genocide. Hrant Dink was murdered by a nationalist extremist six months later, on Jan. 19, 2007.

Hrant Dink's murder led to mass demonstrations in Turkey and international condemnation. He had earlier been sentenced in 2005 to a six-month suspended prison term under Art. 301 in another case. (See below.)

➔ In October 2007, Hacı Bogatekin, owner of the *Gerger Firat* newspaper, was arrested for insulting Turkishness because he criticized state policies in an article titled “Turkey has made mistakes,” printed March 10, 2007.

➔ On Sept. 27, 2007, a penal court in Istanbul decreed that writer and film director Umur Hozatli insulted the state security forces in the press and sentenced him to a six-month term. It was reduced to five months, and the sentence was converted to a 20 YTL fine per day, a total of 3,000 YTL (approx. US \$1,900).

In an article titled “Irritating Men” for the newspaper *Ülkede Özgür Gündem*, Hozatli criticized the police and the judiciary system. The article was published Nov. 11, 2006.

“Because I love my country,” Hozatli said in his defense in court, “my aim was not to insult the police force and the judiciary. The article was written in order to criticize the mistakes I have seen in the police force and the judiciary. I love my country, and because I love it, I have to criticize the mistakes I see.”

The prosecutor demanded punishment for a quotation: “Members of the Turkish police force are famous for not working with a police mentality, but for trying to spread fear for their personal benefit, regardless of whether people are innocent or guilty. The men are bored, so they collaborate with like-minded prosecutors and judges in identifying people and groups with whose ideologies they disagree -- people they find irritating -- and arrest them, putting them away as terrorists, separatists and destructive people. The Turkish police, together with prosecutors and judges, are working as an organization which creates terrorists.”

➔ On Sept. 21, 2007, the Kocaeli Second Penal Court sentenced cartoonist Muhammet Sengöz to 11 months, 20 days imprisonment for a satirical cartoon in the *Free Kocaeli* newspaper. The case was brought by Greater Kocaeli Mayor Ibrahim Karaosmanoglu. The cartoonist was sentenced despite the prosecution’s call for his acquittal.

Sengöz’s cartoon was a response to billboards that Karaosmanoglu had put up around the city to praise his achievements. A constant theme on the billboards was a person asking, “What’s next, Mayor?” In Sengöz’s cartoon, a man with his back to the reader and with his trousers down asks, “Who’s next, Mayor?”

The prosecutor argued that the cartoon, printed July 21, 2007, was not an insult, but a criticism. But the court decided Sengöz exceeded the bounds of criticism and sentenced him to one year, two months’ imprisonment for insult. This was reduced to 11 months, 20 days, and the prison sentence turned into a 7,000 YTL (approx. US \$5,800) fine.

➔ On Jan. 19, 2007, a self-professed Turkish nationalist extremist killed renowned journalist Hrant Dink in an Istanbul street. Before the killing, the courts had found Dink guilty of insulting “Turkishness,” and therefore of violating Art. 301. At around noon, the 53-year-old editor was approaching the offices of his newspaper, the weekly *Agos*, when a young man approached and shot Dink twice in the head and once in the neck point-

blank. Dink, who died at the scene, had recently lost an appeal against a six-month suspended sentence for referring to the massacre of Armenians in 1915 as a “genocide.”

Dink’s 17-year-old killer, who confessed the murder, was standing trial with seven other suspects for what appears to have been a plot by a group of ultranationalists.

Dink’s murder sparked public outrage, and Turkish President Abdullah Gul publicly conceded that Art. 301 should be eased. The law was amended in April 2008, but campaigners for freedom of expression called for it to be scrapped altogether. Under the changes, the maximum sentence for breaching Art. 301 was reduced from three to two years in prison; each prosecution must henceforth be approved by the Justice Minister. The crime of “insult against Turkishness” was changed to “insult against the Turkish nation.”

EU officials have welcomed the changes to Art. 301, calling it an “acceptable compromise,” while urging Turkey to undertake similar reforms of remaining criminal defamation laws.

### **Relevant Laws**

In Turkey, there are 11 insult laws, including one – the 1951 Law to Protect Ataturk – written specifically to protect the memory of the founder of modern Turkey, Mustafa Kemal Ataturk. Among other laws:

#### **Offenses against Dignity**

##### **Art. 125: Defamation**

- 1) A person who makes an allegation of an act or concrete fact about 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. In order to punish the insults in the absence of the victim the act should have been witnessed by at least three persons.
- 2) If the act is committed by means of a voiced, written or visual message addressing the victim, the perpetrator shall be sentenced to the penalties set out above.
- 3) If the offense of defamation is committed:
  - 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) due to expression, changing, efforts for expansion of one’s religious, political, social, philosophical beliefs, thoughts and opinions, one’s compliance with the rules and prohibitions of his religion,
  - c) Through mentioning the holy values of the religion the person is a member of, the minimum length of the penalty cannot be less than one year.
- 4) Where the defamation is committed explicitly, the penalty shall be increased by one sixth; if it is committed through the press and media, then the penalty shall be increased by one third.

**Art. 130: Defamation of the memory of a dead person:**

A person who commits under 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 a judicial fine will be imposed. If the offense of defamation is committed explicitly it shall be increased by one sixth.

**Offenses Against Justice**

**Art. 288:** (used against journalists criticizing the outcome of trials):

A person who explicitly makes a verbal or written declaration for the purpose of influencing the public prosecutor, judge, the court, expert witness or witnesses until the final judgment is given about an investigation or prosecution will be imprisoned for a term from six months to three years.

If this offense is committed through press or media, the penalty to be imposed shall be increased by one half.

**Offenses against Symbols of State Sovereignty and Reputation of its Organs****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; and by one third if it is committed by way of press and media.

**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 signs bearing the white crescent and star on red field as stipulated in the Constitution that are used as the indicators of the sovereignty of the State of the Republic of Turkey.

2) A person explicitly insulting the National Anthem shall be imposed a penalty of imprisonment for a term 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: Denigration of “Turkishness,” the Republic and the foundation and institutions of the State**

This article was introduced with the legislative reforms of June 1, 2005, and replaced Art. 159 of the previous penal code. It states that:

1) Public denigration of Turkishness, the Republic or the Grand National Assembly of Turkey shall be punishable by imprisonment of between six months and three years.

2) Public denigration of the Government of the Republic of Turkey, the judicial institutions of the State, the military or security structures shall be punishable by imprisonment of between six months and two years.

3) In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.

4) Expressions of thought intended to criticize shall not constitute a crime.



## UNITED KINGDOM

Population: 60.6 Million

Press Freedom Rating: Free



With a history of independent reporting, the United Kingdom maintained its free press environment in 2007 and 2008. The law provides for freedom of the press, and the government has generally respected this right in practice.

British libel laws have traditionally heavily favored plaintiffs, with defendants bearing the burden of truth. However, a Law Lords ruling in October 2006 held that if journalists acted “fairly and responsibly,” and the article was in the public interest, a newspaper could not be forced to pay damages for “relevant but defamatory allegations.”

### Developments

➔ In March 2008, the British House of Lords voted to abolish the common law crimes of blasphemy and blasphemous libel. “While blasphemy laws have long fallen into disuse in England, their continued presence casts a shadow on free expression in the UK and sends a signal to other countries that such laws are acceptable,” said the Article 19 organization. It had called for repeal of blasphemy laws because they limited legitimate criticism of religion.

Blasphemy laws are rarely applied in modern democracies, but the existence of such laws in countries like the UK provides justification for other countries that use their own blasphemy laws to stifle free expression. The fact that English blasphemy laws only protected the Church of England and not other religions made these laws incompatible with democratic principles.

European-based media groups have argued that criminalization of blasphemy is unneeded, and that prevention of religious violence and discrimination is better served by carefully crafted hate speech laws.

➔ “Libel tourism” – forum shopping for laws and courts that are particularly plaintiff-friendly – has emerged as a serious transnational free speech issue in Britain, whose laws are increasingly used by foreigners to collect huge sums in court cases in libel rulings where the alleged defamations appeared marginally, if at all, in the British media. Showings of sales in Britain of just a few copies of a book published elsewhere have sufficed for British courts to accept jurisdiction. In May 2008, Freedom House and Article 19 convened a panel of experts in London to highlight this issue.

The burden of proof placed on defendants, combined with the UK’s image as a “paragon of high jurisprudential standards,” makes the country an attractive venue for plaintiffs

seeking to silence critics. Successful litigants can obtain the validation and imprimatur of the UK courts, with considerable public relations weight.

As Article 19 Executive Director Agnes Callamard observed: “It’s a disgrace that a country such as the UK, which represents itself as a pioneer of democracy, should be the first port of call for the rich and powerful looking to not only silence but seek retaliation for criticisms made against them.” Once a haven for printing of controversial publications, the UK now finds itself without access to such material. To avoid suits in British courts, authors are choosing not to distribute contentious books in the UK.

## **Relevant Laws**

### **Defamation**

Defamation is a criminal offense, but prosecutions may only be undertaken if deemed justified by the public interest. Civil defamation cases are far more common. Truth and public interest may be relied upon as defenses in defamation cases.

### **Racial and Religious Hatred Act of 2006**

#### **29B Use of words or behavior or display of written material**

A person who uses threatening words or behavior, or displays any written material which is threatening, is guilty of an offense if he intends thereby to stir up religious hatred.

#### **29C Publishing or distributing written material**

A person who publishes or distributes written material which is threatening is guilty of an offense if he intends thereby to stir up religious hatred.

#### **29F Broadcasting**

If a program involving threatening visual images or sounds is included in a program, there is an offense if there is intent to stir up religious hatred.

#### **29J Protection of Freedom of Expression**

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytizing or urging adherents of a different religion or belief system to cease practicing their religion or belief system.

#### **29L Procedure and Punishment**

A person guilty of an offense under this Part is liable

(a) on conviction on indictment to imprisonment for a term not exceeding seven years or a fine or both; (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

# Former Soviet Union

Azerbaijan  
Belarus  
Kazakhstan  
Kirghizstan  
Moldova  
Russia  
Tajikistan

CARICATURE

Scorn

Ridicule

Blasphemy

Contempt

SEDITIONOUS LIBEL

INSULT

Offense

Protect Honor and Dignity

Mockery

Irony

Disrespect

PARODY

SATIRE

outrage

Affront

Defamation of religion

LÈSE-MAJESTÉ

## AZERBAIJAN

Population: 8.5 Million

Press Freedom Rating: Not Free

Despite constitutional and legal protection for freedom of speech and of the press, media freedom in Azerbaijan continued to decline in 2007 and 2008. Libel suits instituted by officials, unfair trials, physical attacks and financial pressure were all used to limit media freedom. The government jails journalists on a revolving-door basis.



### Developments

➔ On Dec. 30, 2008, a lawsuit was brought by the chairman of the Adalat Party, Ilyas Ismayilov, against journalist Faramaz Novruzoglu (Allahverdiyev), an advisor for *Nota* newspaper, and Ilham Tumas (Agayev), editor-in-chief of *24 Saat* newspaper. The suit was based on Arts. 147 and 148 of the Penal Code, referring to insult and libel.

Allahverdiyev believes that the lawsuit was brought against him for political reasons and that acceptance of the suit by the courts was illegal. “First of all there’s no evidence to prove that I wrote the article [for which the lawsuit is being brought],” he said. “Also, according to Art. 44 of the mass media law, all individuals have the right to respond to articles that they feel damage their honor or dignity within a month. They can demand that a correction be published or they can appeal directly to the courts. However, Ismayilov appealed to the courts on Oct. 16, 2008 regarding an article that was published on May 28, 2008. The consideration of this case is unacceptable.”

Judge Kazimov postponed the next hearing for an indefinite period after submitting the article for an expert opinion to determine whether it was written by Allahverdiyev. The lawsuit stems from an article titled, “Russia rejects Ilyas Ismayilov,” published in *24 Saat* on May 28. In the article, Ismayilov is accused of having ties to separatists and of working for Russia. Ismayilov has called for Allahverdiyev’s arrest.

➔ In November 2008, an Azerbaijani court convicted Ali Hasanov, editor-in-chief of the pro-government daily *Ideal*, on defamation charges and sentenced him to six months in jail. Hasanov’s trial was based on a suit filed in September by Sabira Makhmudova, who claimed that Hasanov and his deputy editor, Nazim Guliyev, insulted her honor and dignity in two articles published in August. Makhmudova demanded that the two journalists be jailed. On Oct. 30, Nasimi District Court convicted Guliyev in absentia of insulting Makhmudova and ordered his arrest. He has been in hiding since mid-October.

The two unsigned articles alleged that Makhmudova, a Nagorno-Karabakh war veteran, was connected to a prostitution ring. Hasanov said that he only became editor of the paper after the articles were published. He was freed in an April 2009 amnesty.

➔ In October 2008, a hearing on a suit by ANS Companies Group against *Yeni Musavat* newspaper concluded. *Yeni Musavat* assistant editor-in-chief Azer Aykhan reported that the ANS lawsuit against the newspaper was ruled as unfounded.

The suit was over article “Military Minister against Head of Administration” printed May 13, 2008. In the suit, ANS Companies Group accused the paper of degrading its honor and dignity and demanded that the paper’s editorial office pay a 50,000 New Azerbaijani Manats (approx. US \$62,000) fine, that the author of the article pay a 10,000 Manat fine (approx. US \$12,500), and that the newspaper publish a repudiation.

➔ In October 2008, *Azadliq* newspaper’s lawyers appealed to the European Court of Human Rights. The appeal stems from a case against *Azadliq* brought by Azerbaijan Military Forces Commander-in-Chief Shahin Sultanov.

Sultanov appealed to Sabail District court, claiming an article titled “Contours of rear admiral” damaged his honor and dignity. The court partially satisfied his demand and decided that the newspaper and its editor-in-chief should pay 1,165 Manats (approx. US \$1,450) in fines and publish a repudiation.

➔ On Jan. 17, 2008, Avaz Zeynalli, the editor-in-chief of *Khural* newspaper, and the newspaper’s correspondent, Kamal Huseyn, were convicted of libel. The director of the Azerbaijan Publishing House and executive director of Azerbaijan’s Presidential Works Department, Agabey Asgerov, filed the suit against Zeynalli and Huseyn in response to two articles in August and July 2007 that alleged Asagarov had broken the law.

Zeynalli was sentenced to two years “corrective labor.” While he serves his sentence, he is to pay 20 per cent of his salary to the State. Huseyn was sentenced to 18 months’ “corrective labor” and also to pay the State 20 per cent of his salary.

➔ On Dec. 28, 2007, Samir Sadagatoglu, Rafiq Tagi, Faramaz Novruzoglu, Rovshan Kebirli, and Yashar Agazadeh were pardoned by presidential decree. They were jailed in 2006 and 2007 on charges of defamation and of inciting religious hatred. They have nevertheless appealed to the European Human Rights Court to clear their good names, with the backing of a second round of legal defense grants from the WPFC-administered Fund Against Censorship.

Samir Sadagatoglu, editor of the weekly *Senet*, was sentenced to four years in prison and writer Rafiq Tagi to three years under a penal code prohibition of “inciting racial, national and religious hatred” for an article critical of Islam. The article, printed in November 2006, argued that Azerbaijan’s progress was thanks to European humanistic and universal values, not Asian ones. It said Islam was an expression of Asian despotism and that some of Prophet Mohammed’s pronouncements were aggressive, unlike those of Jesus Christ.

In May 2007, *Mukhalifet* journalist Yashar Aghazade and editor-in-chief Rovshan Kabirli, were convicted of libel and sentenced to 30 months in jail in a suit filed by a member of Parliament.

On Jan. 24, 2008, the WPFC wrote to Azerbaijan's President Ilham Aliyev, hailing his decision to pardon five journalists imprisoned on criminal defamation convictions. The letter also expressed concern over the large number of incarcerations of journalists in Azerbaijan, including those of Avaz Zeynalli, editor-in-chief of the newspaper *Khural*, and of one of his reporters, Kamal Huseyn, for alleged libel.

WPFC Executive Director Mark Bench wrote: "Your decision made possible the release from prison of Samir Sadagatoglu, Rafik Tagi, Yashar Agazade, Rovshan Kiabirli and Faramaz Allakhverdiev. All of them had been convicted of criminal defamation in connection with their duties to keep their readers informed about matters of public interest. Four journalists more, however, still remain in prison: Eynulla Fetullayev, Sakit Zahidov, Ganimat Zahidov and Musfiq Huseynov. ...

"We are astounded by the extreme severity of the sentences imposed on these journalists for fulfilling their professional duty to keep their readers informed. When a journalist is imprisoned and sentenced to 'corrective labor,' the rights of his or her readers, audience or viewers are also, in a sense, imprisoned and sentenced to 'corrective labor.' ...

"Both the jurisprudence of the European Court of Human Rights and the recommendations of the UN Commission on Human Rights support the concept that public officials should expect more, and not less, scrutiny and criticism from the rest of society. ...

"Both institutions also state that criminal defamation and insult laws, in the hands of public officials, can become a potent censorship tool to shield themselves from the scrutiny of the press and the rest of society. As a matter of fact, international human rights jurisprudence recommends that all laws that allow criminal penalties for defamation, particularly those that are applied against journalists and media outlets, ought to be decriminalized in all the countries where they exist, including Azerbaijan. Likewise, they maintain that any fines, even those as a result of civil proceedings, ought to be applied in a sensible way so they do not become intimidatory weapons that impede the necessary flow of information in a democratic society.

"We need to restate that the unjust incarcerations of journalists...constitute a frontal attack on the very press freedom principles whose respect is essential for the functioning of a democratic society. Therefore, your Excellency, we congratulate you again for your December 28 pardons but also urge you to use the full extent of the executive power's influence to immediately begin the appropriate proceeding in order to free all of them."

➔ On April 20, 2007, Eynulla Fatullayev, editor-in-chief of *Realny Azerbaijan* and *Gundelik Azerbaijan*, was arrested, charged with libel, tried and sentenced to two and a half years imprisonment for comments attributed to him posted on a web site in February.

They suggested that both Azerbaijani and Armenian forces were responsible for the massacre of hundreds of ethnic Azerbaijanis from the village of Xocal in 1992, during the 1991-1994 war in the province of Nagorny-Karabakh. The court ruled he had libeled Xocal's villagers and Azerbaijani war veterans. That night, a colleague who testified for him was assaulted by two men he identified as having been in the courtroom that day.

Eynulla Fatullayev was later sentenced, Oct. 30, 2007, to an additional eight and a half years imprisonment on charges of terrorism, incitement of ethnic hatred, and tax evasion. The two newspapers he operated were evicted from their premises in May 2007.

➔ In January 2007, Faramaz Allahverdiyev, a *Nota Bene* journalist, was convicted of libeling the minister of internal affairs and sentenced to two years imprisonment.

### **Relevant Laws**

#### **Penal Code**

##### **Art. 147: Slander**

147.1. Slander is distribution of obviously false information that discredit honor and dignity of any person or undermining his reputation in public statement, publicly or in mass media shown products -- is punished by a fine of 100 to 500 nominal financial units, or by public work for up to 240 hours, or by corrective labor for up to one year, or imprisonment for up to six months.

##### **Art. 148: Insult**

Insult is deliberate humiliation of honor and dignity of a person, expressed in the indecent form in public statement, publicly or in mass media shown product -- is punished by fine of 300 to 1,000 nominal financial units, or by public works for up to 240 hours, or by corrective labor for up to one year, or imprisonment for up to six months.

##### **Art. 283: Incitement of national, racial or religious hostility**

283.1. Actions directed at incitement of national, racial or religious hostility, humiliation of national advantage, as well as actions directed at restriction of citizens rights, or establishment of the superiority of citizens on the basis of their national or racial belonging, creeds committed publicly or with use of mass media -- is punished by 1,000 to 2,000 nominal financial units, or restriction of freedom for up to three years, or imprisonment for two to four years.

##### **Art. 323: Humiliation of honor and dignity of the President of Azerbaijan**

323.1. Humiliation of honor and dignity of the President of the Azerbaijan Republic in public statement, publicly shown product or mass media -- is punished by 500 to 1,000 nominal financial units, or corrective labor for up to two years, or imprisonment for the same term.

## BELARUS

Population: 9.7 Million

Press Freedom Rating: Not Free

In 2007 and 2008, Freedom House included Belarus in its 10-country list of “the worst press freedom abusers.” The U.S. Department of State has ranked Belarus among 13 “countries with continually poor records on press freedom.”

The government maintained a near monopoly on the press, while restricting distribution of private newspapers. The current law on media is being used to punish critical journalists, and the Penal Code provides harsh penalties. The Belarusian Press Law provides that anyone portraying the President or the country in a bad light may be imprisoned for up to two years.



### Developments

➔ In March 2008, KGB, the state security agency, raided the homes of journalists Eduard Mielnikau in Minsk, Anatol Hatochyts in Homiel, Alena Stsiapanava in Vitsiebsk, Tamara Shchapiotkina in Biaroza and Hienadz Sudnik in Mahileu. The government accused them of insulting President Alexander Lukashenko in cartoons during the public initiative “Third Way” in 2005. Agents seized computers and other materials. They also tried to search the home of journalist Vadzim Barshcheusky in Vitsiebsk, who did not open the door.

➔ In April 2007, writer and political activist Andrei Kilmau was arrested and charged with “inciting the regime’s overthrow” in an Internet article critical of Lukashenko and considering options for changing the political system of Belarus. It was the first time a journalist has been arrested in Belarus for content published online.

### Relevant Laws

#### **Belarusian Constitution**

**Art. 33** guarantees the right to freedom of expression.

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

**Art. 79** forbids insulting the President. The electoral code further prohibits “insulting or defaming the honor and dignity of official persons, presidential and parliamentary candidates.”



### **Civil Code**

**Art. 5** prohibits publication of information damaging the honor and dignity of the president and other government officials, with possible punishment of closure.

### **Penal Code**

#### **Art. 130: Incitement to racial, ethnic or religious hatred**

Deliberate acts intended to incite racial, ethnic or religious hatred or to outrage the national dignity are punished by a fine or a term of arrest of up to six months, or a restriction of freedom of up to five years, or of imprisonment for the same length of time.

1. The same acts connected with violence or committed by an official using the powers entrusted to him are punishable by imprisonment of three to ten years.
2. The acts provided for in paragraphs 1 and 2 of this article, when committed by a group of persons or when they have caused the death of a person through negligence or have led to other serious consequences, are punishable by imprisonment of five to 12 years.

#### **Art. 188: Insulting a Representative of Public Powers**

Insulting a representative of the powers (authorities) in connection with the performance of duties assigned to him -- shall be punishable by corrective labor for a term of up to one year or a fine.

Insulting a Militiaman, People's Guard, Serviceman or Another Person in Connection with Their Performance of Official Duties or of Public Duty for the Protection of Public Order. Insulting a militiaman, people's guard, serviceman or another person in connection with their performance of official duties, or of public duty protection of public order, shall be punishable by corrective labor for a term of up to one year or a fine.

- Art. 189:** 1. Deliberate degradation of the honor and dignity of an individual, expressed in an indecent manner (insult), committed within one year of administrative prosecution for slander or insult is punishable by community service, or a fine, or corrective labor for a period of up to one year, or limitation of freedom for a period of 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 a period of up to two years, or detention for a period of up to three months, or limitation of freedom for a period of up to three years, or a prison sentence for a period of up to two years.

**Art. 367:** "Defamation regarding 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.

**Art. 368:** "Insult of the President" stipulates that a public insult would draw a fine or two years imprisonment.

### **2006 Amendments to the Penal Code**

**Art. 361/1:** Criminalizes "calls for actions directed at damaging the national security of Belarus, the overthrow of the State, territorial integrity ..."

**Art. 361/2:** Criminalizes “calls addressed to a foreign State or an international organization to act in a manner that harms the national security of Belarus.” Both offenses are punishable by jail terms of up to three years – or five years if disseminated through the media.

**Art. 369: Defamation of the Republic of Belarus**

Criminalizes defamation of the Republic of Belarus vis-a-vis foreign states and foreign or international organizations, defined as knowingly handing over false information concerning 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 the Republic of Belarus.

## KAZAKHSTAN

Population: 15.3 Million

Press Freedom Rating: Not Free



Kazakhstan's laws guarantee the media the right to report on political events, but independent media continue to be threatened and harassed for criticizing the president or government. Much of the media is controlled by President Nursultan Nazarbayev's associates, most notably his daughter, and content is managed by forbidding operating licenses to many opposition media outlets.

Web sites must be registered by the Agency for Information and Communication, which handles new technology. To register, site owners must agree to use the state-owned KazakhTelecom. This allows the state to "pull the plug" on any web site.

There is no ceiling on fines. Large fees are levied against reporters and their newspapers for alleged transgressions, which is devastating to news operations. Punishments also include sealing of presses and seizure of office equipment, often for a civil offense, and often without court order.

### Developments

➔ On Dec. 23, 2008, 22 member groups of the International Freedom of Expression Exchange (IFEX) led by Kazakh member group Adil Soz wrote to Kazakhstan's Parliamentarians urging them to decriminalize libel and to adopt other amendments of the country's media laws.

A government draft law developed by the Ministry of Culture and Information made no changes in current legislation, ignoring proposals by media groups and NGOs, the IFEX members said.

Libel is still a criminal offense, and offenses against "honor and dignity" provide "special protection for public officials," the IFEX groups said. The law will "threaten the financial existence of mass media organizations and their responsibility to report the truth," said the members.

Registration of mass media in Kazakhstan still does not meet Organization for Security and Cooperation in Europe (OSCE) standards in the draft, even though Kazakhstan was to take over as OSCE chair in 2010 and vowed to reform its own restrictive press laws as part of this duty.

"We believe that the people of Kazakhstan are entitled to progressive laws according to the principles of free speech laid out in the Constitution. We consider that work on improving the legislation on mass media should be managed in an open and democratic manner," the IFEX groups said.

➔ In January 2007, Kaziz Toguzbayev, a reporter for the independent newspaper *Azat*, was given a two-year suspended sentence for “insulting the honor and dignity” of President Nazarbayev in two articles he published on the web site Kub in April and May 2006.

➔ On March 12, 2007, the city court of Taraz in southern Kazakhstan found Galina Vybornova, a journalist for *Express K* newspaper, guilty of distributing false information, aimed at insulting the honor and dignity of Judge Bolat Berikov. She was fined 218,400 tenge (approx. US \$1,700) and obliged to stay in the country by the court, despite documentary evidence she submitted to substantiate the content of her article.

The criminal charges were based on a complaint filed by Berikov following publication of a Jan. 18 article in *Express K*, entitled “Taraz: bandits triumph.” Berikov alleged that the journalist spread falsehoods by reporting that he was photographed in a sauna with a criminal.

“Under Kazakh law and international standards, defamation is believed to involve information known to be false before being distributed, where the distributor intends to spread false information to insult the honor and dignity of a person. However, the journalist had photographs and documents to verify her report. We believe that court verdict is unlawful. Another aspect is that the judge chose to bring the case to court, instead of trying to defend his honor publicly,” said the head of Adil Soz NGO, Tamara Kaleyeva.

➔ The government continues to censor the Internet and in 2007 “deregistered” or suspended several web sites. The government also blocked several opposition web sites that reported on President Nazarbayev’s public feud with his former son-in-law, Rakhat Aliyev, the Kazakh ambassador to Austria.

### **Relevant Laws**

“Insulting the honor and dignity of the president” is an offense under Art. 318 of the Penal Code of Kazakhstan, and is used frequently to discourage public scrutiny of officials and their actions. The article provides prison terms of up to three years.

“A public insult or other infringement upon the honor and dignity of the President of the Republic of Kazakhstan committed with the use of the mass information media shall be punished by a fine of 500 to 1,000 minimum monthly wages, or an amount equivalent to the wages or other income of the convicted person for a period of five to 10 months, or by correctional labor for a period of one to two years, or by detention for a period of up to six months, or by imprisonment for a period of up to three years.”

**Penal Code of the Republic of Kazakhstan****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 a period up to one month, or by engagement in public works for a period up to 120 hours, or by correctional labor for a period 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 a period from one to four months, or by engagement in public works for a period up to 180 hours, or by correctional labor for a period up to one year, or by restriction of freedom for the same period.

**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 a period from two to seven months, or by engagement in public works for a period from 180 up to 240 hours, or by correctional labor for a period up to one year, or by detention under arrest for a period up to five months, or by imprisonment for a period 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 a period from five to ten months, or by correctional labor for a period from one year up to two years, or by detention under arrest for a period up to six months, or by imprisonment for a period up to three years.

**Art. 319: Infringement of Honor and Dignity of a Deputy and 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 a period from one to five months, or by engagement in public works for a period up to 180 hours, or by correctional labor for a period up to one year, or by restriction of freedom for the same period, or by detention under arrest for a period 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 a period from three to eight months, or by correctional labor for a period from one to two years, or by restriction of freedom for a period up to two years, or by detention under arrest for a period up to six months, or imprisonment for a period 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 a period from one to four months, or by engagement in public works for a period up to 180 hours, or by correctional labor for a period up to one year, or by restriction of freedom for the same period, or by detention under arrest for a period 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 a period from three to seven months, or by correctional labor for a period up to two years, or by restriction of freedom for a period up to two years, or by detention under arrest for a period up to six months, or by imprisonment for a period up to one year.

## KIRGHIZSTAN

Population: 5.4 Million

Press Freedom Rating: Not Free

### Developments

→ In October 2008, all transmissions by Radio Free Europe/Radio Liberty (RFE/RL) into the country were suspended after the Kirghiz government withdrew its broadcasting rights. The reason alleged was unpaid debts. However, Melis Eshimkanov, head of the Kirghiz National Television and Radio Corporation, said in December that RFE/RL's programs were "too negative and too critical" of the government, and that its programs would have to be submitted for prior government approval before broadcasting could resume.

→ Kirghiz authorities were systematic in prosecuting two Bishkek-based independent weeklies, *De-Facto* and *Alibi*. Cholpon Orozobekova, founder and editor-in-chief of *De-Facto*, and Babyrbek Dzheyenbekov, editor of *Alibi*, published articles in early 2008 suggesting that President Bakiyev's nephew, Asylbek Saliyev, may have had a role in a fatal car accident. Saliyev denied the assertions and filed civil complaints against the two papers in March, demanding monetary damages. On June 2, 2008, a district court in Bishkek ruled for Saliyev and ordered *De-Facto* and *Alibi* to pay Saliyev 1 million Soms (approx. US \$27,680) each.

Unable to meet the payment deadline and seeing its appeal rejected, *Alibi* was forced to close in August. The next month, Bishkek prosecutors opened a criminal investigation against Dzheyenbekov for failing to pay damages, a charge that could carry up to two years in prison.

Two weeks after the verdict, Bishkek police raided the *De-Facto* office, seized its computers and financial documents, and sealed the newsroom. The raid, which effectively shuttered the paper, took place after *De-Facto* published a letter from a Bishkek resident alleging widespread government corruption and naming a number of officials, according to local press reports. The Prosecutor General's office opened a criminal case against *De-Facto* on charges of "distribution of knowingly false denunciation." A month later, the same district court that had ruled in favor of Saliyev ordered *De-Facto* to pay 2 million Soms (approx. US \$55,360) in damages to two officials who claimed the letter had damaged their reputations.

In July 2008, authorities filed the same "false denunciation" charge directly against Orozobekova. Facing up to five years in prison if convicted, Orozobekova fled Kirghizstan.



## **Relevant Laws**

### **Constitution**

**Art. 16:** Everyone has the right to freedom of thought, speech, and press as well as to freedom of expression of his ideas and opinion.

**Art. 65:** No laws abridging the freedom of speech, or of the press shall be made.

### **Penal Code**

**Art. 127:** Criminalizes “slander,” defined as “dissemination of wittingly false information, defaming a person’s honor and dignity or undermining a person’s or entity’s reputation.”

“Ordinary” slander is punishable by a fine ranging from 50 to 100 minimum monthly wages; slander through the media is punishable by 100 to 1,000 minimum monthly wages; and a slanderous accusation of a grave or very grave crime may be punished with up to three years’ imprisonment.

**Art. 128:** Criminalizes “deliberate humiliation of honor and dignity of other person expressed in an indecent form”; this is punishable by a fine ranging from 20 to 50 minimum monthly wages. If the offense is committed through the mass media or in a public speech, the fine ranges from 50 to a 100 minimum monthly wages.

**Art. 129:** “Insult ... verbal, written or physical” is punishable by a fine or up to six months corrective labor or public reprimand.

### **Civil Defamation**

**Art. 16:** Establishes the general principle that compensation may be obtained for any action resulting in “moral harm.”

**Art. 18:** A citizen or legal entity shall be entitled to demand refutation in court of information discrediting his honor, dignity or business reputation, if the person publishing such information cannot prove that it is true. On the demand of interested persons, a citizen’s honor, dignity may be protected after his death.



## **MOLDOVA**

Population: 3.8 Million

Press Freedom Rating: Not Free

The Moldovan government has approved a number of legal reforms in recent years, but those reforms have not been implemented, and media restrictions have continued. Libel is no longer punishable by imprisonment, and in 2006 the Parliament approved legislation capping previously unlimited fines in libel cases.



### **Developments**

➔ Moldova's Parliament passed an amendment to the Law on Editorial Activity that went into effect June 26, 2008. The Law on Editorial Activity now includes a ban on printing material that challenges or defames the state and the people, incites war, aggression, national, racial or religious hatred, discrimination, territorial separatism, public violence or that threatens the constitutional regime in any other way.

### **Relevant Laws**

On April 24, 1996, the Parliament of Moldova repealed Art. 203/6 of the Penal Code, which had provided that insult or defamation of the President of the Republic or Chairman of the Parliament was a criminal offense, punishable by a fine or up to five years imprisonment. The action was taken at the request of the President and Chairman.

However, Art. 4 of the 1994 Press Law still prohibits publication of "materials that contain disrespect or defamation of the State and its people" and "materials that disparage the honor and dignity of a person."

## RUSSIA

Population: 142.5 Million

Press Freedom Rating: Not Free

### Developments

→ On Oct. 10, 2008, the Ufa Oktyabrsky District Court issued a ruling in the defamation lawsuit filed by Justice Rosa Gilyazitdinova against the newspaper *Chas Pik. Na Magistrali*. The court ordered the newspaper to refute information contained in the article “Lessons of Courtesy” and apologize to Gilyazitdinova, chair of the Arbitration Court in the autonomous Republic of Bashkortostan. The court also ordered the newspaper to pay Gilyazitdinova 10,000 Rubles (approx. US \$365) in moral damages.



In her lawsuit, Gilyazitdinova demanded a repudiation of the information in the article “Lessons of Courtesy,” published in the November 28, 2007 edition of *Chas Pik. Na Magistrali*. She also submitted a claim to recover 10 million Rubles (approx. US \$365,000) in moral damages from the newspaper. She had earlier asked for a criminal case to be opened, but her request was denied. The decision declining to open a criminal case stated: “The facts stated in the article published by the newspaper *Chas Pik* were confirmed during the probe, i.e., no evidence of the crime enshrined by Art. 129 of the Russian Penal Code [slander contained in a public speech in the mass media] was found in the actions taken by the person who published the article.”

The article accused Gilyazitdinova of being unfit for her position and of violating requirements outlined in the Law on the Status of Judges in the Russian Federation and the Code of Judicial Ethics. The article was based on excerpts from an address by Bashkortostan’s Council of Judges to the Russian judges’ qualification college, which asked for “early termination of the judge’s [Gilyazitdinova’s] powers.”

The defendants disagree with the court decision and intend to contest it in higher courts, including the European Court of Human Rights. The newspaper’s editor, Svetlana Valiyeva, believes “the decision is definitely subject to reversal. No one has a right to force anyone to apologize.” The editor said the court has failed to take into account the decision made by linguistics experts, who found that the article did not contain any invective or potentially insulting value judgments expressed with the use of language devices (words, word combinations or phrases) that could potentially belittle Gilyazitdinova’s honor, dignity or business reputation.

→ In April 2008, an amendment that would allow the Russian courts to close media outlets for publishing defamatory statements made its way through the Duma, parliament’s lower house, according to local press reports. The bill was voted down in a second reading after President Vladimir Putin expressed disapproval.

On April 25, the State Duma had approved on first reading the restrictive bill to add dissemination of “deliberately false information that insults the honor and dignity of another person or damages one’s reputation” to the list of violations for which a press outlet may be shut down.

The bill would have amended the current media law, which allows for closure by the courts of media outlets found guilty of justifying terrorism, divulging state secrets, disseminating extremist material, or propagating pornography, cruelty, or violence.

Before the bill was struck down, Andrei Richter, Director of the Moscow-based Media Law and Policy Institute, had stated: “This law, if passed, would be detrimental to the media because it would allow for the closure of entire media outlets, not just the punishment of the author of the defamatory materials in question. It would also send a strong signal to the media that the state is watching what they publish, which, in turn, would have a chilling effect on their coverage.”

➔ In March 2008, Alexei Kalganov and Viktor Demenev, journalists with the newspaper *Leninskaya Smena*, were alleged to have libeled a law enforcement officer.

The case against the journalists was opened over an article run by *Leninskaya Smena* in April 2007, which described a car accident involving Andrei Smirnov, prosecutor of the Shatkovsky district of Nizhny Novgorod. According to the publication, Smirnov’s car drove into the river Tesha while the prosecutor was celebrating an occasion on the riverbank with his friends.

During the probe, Smirnov said he had not witnessed the incident, and his driver claimed responsibility for the accident. As a result, the investigators found the article to contain false information accusing the prosecutor of violating the law and opened a criminal case against Kalganov and Demenev on the basis of Art. 129 of the Russian Penal Code. The newspaper admitted its fault and published a repudiation in April 2007. Kalganov also offered Smirnov an apology, which was accepted. However, the criminal case was reopened immediately after the publication of the repudiation.

Law enforcement officials inspected the newspaper’s operations and seized its computers, on which unlicensed software was installed, putting publication of the paper in jeopardy. In addition, many private distributors now refuse to work with the newspaper, as a result of which the circulation has declined from 15,000 to 4,000 copies.

Under Russian legislation, slander and insult cases are initiated on the basis of a complaint by the plaintiff or a prosecutor. When a case is initiated by a plaintiff, the case is dismissed in case of conciliation. If the case was initiated by a prosecutor, the case cannot be dismissed even in case of the parties’ conciliation. If a prosecutor takes on a case initiated on the basis of a victim’s complaint, the case cannot be dismissed either. Since the case was initiated by a prosecutor, it could not be dismissed.

➔ On March 4, 2008, prosecutors filed charges against Nikolai Sokolov, editor-in-chief of the newspaper *Fakty s Argumentami*, under Art. 319 of the Penal Code of the Russian Federation, on “insulting an authority.”

A criminal case was opened earlier against Sokolov under Art. 129 of the Penal Code of the Russian Federation, on “libel disseminated by a mass medium.” The criminal case was initiated by Viktor Sokovykh, mayor of the town of Elets, who accused the journalist of deliberate dissemination of false information denigrating Solovykh’s honor and dignity.

The new criminal case was opened over an article entitled “Turnskin?,” printed in the Nov. 22, 2007 edition of *Fakty s Argumentami*, containing statements about Sokovykh the prosecutors deemed to be designed to denigrate the mayor’s honor and dignity.

A commission of experts in linguistics and criminal law (required under Russian law) decided that the article contained obscene expressions. However, the experts could not decide whether the expressions were insulting to Sokovykh as a person or as an authority in connection with the fulfillment of his duties. The commission said it could not confirm that the journalist deliberately disseminated false information about the mayor.

➔ On Jan. 11, 2007 in Ivanovo City, the Ivanovo regional court confirmed an October 2006 verdict against Vladimir Rakhmankov, editor of the Internet-based newspaper *Kursiv*. He was previously ordered to pay a fine of 20,000 Rubles (approx. US \$745) for publishing an article titled “Putin as a Phallic Symbol of Russia” on May 18, 2006 on the *Kursiv* web site. The article satirized President Putin’s campaign to boost the birth rate.

Rakhmankov told CJES he did not believe he had committed a crime since he believes that only offensive language counts as offensive. He said he intended to appeal.

On May 19, 2006, investigators from the Ivanovo regional prosecutor’s office raided *Kursiv*’s newsroom, seized computers, and searched Rakhmankov’s apartment, confiscating his personal computer. *Kursiv* was forced to change Internet providers after its previous provider halted service following the article on Putin.

### **Relevant Laws**

(In a 2006 report on compliance of European laws with decisions of the European Court of Human Rights, the Council of Europe noted that, “Arts. 151 and 152 of the [Russian] Civil Code and Arts. 129 and 130 of the Criminal Code are still being used by public figures in order to intimidate or silence hostile media. They are a serious impediment to the practice of investigative journalism, with its potential to publicize and thus to reduce incidents of corruption and wrongdoing in public life.”)

### **Constitution of the Russian Federation**

**Art. 23:** Each person has the right to the inviolability of his private life, individual and family privacy, and defense of his honor and good name.

**Art. 29:** Guarantees every person the right to freedom of thought and speech and freedom of the media.

**2002 Law on Extremist Activities (updated July 2006)**

**Art. 8:** Warning a news medium of the inadmissibility of distributing extremist materials or engaging in extremist activities:

In the event of a news media outlet used for distributing extremist materials or showing signs of engagement in extremist activities, the founder and/or editorial board (editor-in-chief) of such media outlet shall be warned in writing – by the registrar or the federal executive authority in charge of the press, TV/radio broadcasting and public communications, or the RF Prosecutor General or his relevant subordinate prosecutor – of the inadmissibility of such actions or activities, with due substantiation of the reasons for the issuance of the warning, including enclosure of a list of specific violations committed by the warned party. If measures can be taken to eliminate such violations, the warning shall establish a time period for the purpose, ending at least ten days after the warning's issuance date.

A warning may be challenged in court as established under the law.

If a warning has failed to be challenged in court as established under the law, or has not been turned down by a court as unlawful, or if the warned party has failed to take measures before the established deadline to eliminate the violations that gave rise to the warning, or if new facts become known within 12 months of the date of the warning's issuance testifying to the media outlet's engaging in extremist activities, the operation of such media outlet shall be terminated as established under this Federal Law.

**The Criminal Code of the Russian Federation**

Adopted by the State Duma on May 24, 1996; by the Federation Council on June 5, 1996 Federal Law No. 64-FZ of June 13, 1996 on the Enforcement of the Criminal Code of the Russian Federation

**Art. 129: Slander**

1. Slander, 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 works 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. Slander 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 works 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. Slander 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 works 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 works for a term of up to 180 hours, or by corrective labor for a term of up to one year.

**Art. 280: Public Appeals for a Forcible Change of the Constitutional System**

1. Public appeals for a forcible seizure of state power, its forcible retention, or for a forcible change of the constitutional system of the Russian Federation, shall be punishable by a fine in the amount of 500 to 700 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of five to seven months, or by arrest for a term of four to six months, or by deprivation of liberty for a term of up to three years.

2. The same acts, committed with the use of the mass media, shall be punishable by deprivation of liberty for a term from three up to five years entailing the deprivation of the right to hold certain jobs or engage in certain occupations for a term up to three years.

**Art. 282: Incitement of National, Racial, or Religious Enmity**

1. Actions aimed at the incitement of national, racial, or religious enmity, abasement of human dignity, and also propaganda of the exceptionality, superiority, or inferiority of individuals by reason of their attitude to religion, national, or racial affiliation, if these acts have been committed in public or with the use of mass media, shall be punishable by a fine in the amount of 500 to 800 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of five to eight months, or by restraint of liberty for a term of up to three years, or by deprivation of liberty for a term of two to four years.

2. The same acts committed:

a) with the use of violence or with the threat of its use;

b) by a person through his official position;

c) by an organized group,

shall be punishable by deprivation of liberty for a term of three to five years.

**Art. 319: Insult of a Representative of the Authority**

Public insult of a representative of the authority during the discharge by him of his official duties, or in connection with their discharge, 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 12 months.

**The Civil Code of the Russian Federation****Chapter 8. The Non-Material Values and Their Protection****Art. 150:**

1. The life and health, the personal dignity and personal immunity, the honor and good name, the business reputation, the immunity of private life, the personal and family secret, the right of a free movement, of the choice of the place of stay and residence, the right to the name, the copyright and the other personal non-property rights and non-material values, possessed by the citizen since his birth or by force of the law, shall be inalienable and not transferable in any other way. In the cases and in conformity with the procedure, stipulated by the law, the personal non-property rights and the other non-material values, possessed by the deceased person, may be exercised and protected by other persons, including the heirs of their legal owner.

2. The non-material values shall be protected in conformity with the present Code and with the other laws in the cases and in the order, stipulated by these, and also in those cases and within that scope, in which the use of the ways of protecting the civil rights (Art. 12) follow from the substance of the violated non-material right and from the nature of the consequences of this violation.

**Art. 151: Compensation of Moral Damage**

If the citizen has been inflicted a moral damage (physical or moral sufferings) by actions, violating his personal non-property rights or infringing upon the other non-material values in his possession, and also in the other law-stipulated cases, the court may impose upon the culprit the duty to pay out monetary compensation for the said damage.

When determining the size of compensation for moral damage, the court shall take into consideration the extent of the culprit's guilt and the other circumstances, worthy of attention. The court shall also take into account the depth of physical and moral sufferings, connected with the individual features of the person, to whom the damage has been done.

**Art. 152: Protection of the Honor, Dignity and Business Reputation**

1. The citizen shall have the right to claim through the court that information, discrediting his honor, dignity or business reputation be refuted, unless the person who has spread such information proves its correspondence to reality. By the demand of the interested persons, the citizen's honor and dignity shall also be liable to protection after his death.

2. If the information, discrediting the honor, dignity or business reputation of the citizen, has been spread by mass media, it shall be refuted by the same mass media. If the said information is contained in the document, issued by an organization, the given document shall be liable to an exchange or recall. In the other cases, the procedure for the refutation shall be ruled by the court.
3. The citizen, with respect to whom the mass media have published the information, infringing upon his rights or his law-protected interests, shall have the right to publish his answer in the same mass media.
4. If the ruling of the court has not been executed, the court shall have the right to impose upon the culprit a fine, to be exacted in the amount and in the order, stipulated by the procedural legislation, into the revenue of the Russian Federation. Payment of the fine shall not exempt the culprit from the duty to perform the action, ruled by the court decision.
5. The citizen, with respect to whom the information, discrediting his honor, dignity or business reputation has been spread, shall have the right, in addition to the refutation of the given information, also to claim compensation of the losses and of the moral damage, caused by its spread.
6. If the person, who has spread the information, discrediting the honor, dignity or business reputation of the citizen, cannot be identified, the citizen shall have the right to turn to the court with the demand that it recognize the spread information as not corresponding to reality.
7. The rules of the present Article on the protection of the business reputation of the citizen shall be applied, correspondingly, to the protection of the business reputation of the legal entity.



## TAJIKISTAN

Population: 6.6 Million

Press Freedom Rating: Not Free

Tajik media continued to be subjected in 2007 and 2008 to the autocratic rule of President Emomali Rahmon, who is extremely intolerant of dissent and criticism.

The Constitution of Tajikistan provides for a free press, but the rights of journalists to report without fear of reprisal are largely ignored. The government continues to control distribution and printing facilities and routinely dictates editorial content. Beatings, firings, seizure of property, and closures of publications are common.

In 2006, defamation law was expanded to cover online publications. Any print, broadcast or online journalist convicted of defamation faces up to two years in prison, 500 hours of hard labor or a fine of up to 1,000 times the monthly wage.



### Developments

→ Saida Kurbonova, editor-in-chief of the *Ovoza* newspaper, and two of the newspaper's journalists, Mukhaiyo Nozimova and Farangis Nabiyeva, faced charges for "slander contained in public speeches," "insult contained in public speeches" and "illegal collection and distribution of private information."

The charges stem from a June 21, 2007 article in *Ovoza*, describing a concert by Tajik singer Raikhona Rakhimova in Afghanistan. In her complaint, Rakhimova claims the article insulted her honor and dignity. A court hearing was postponed because Rakhimova failed to appear in court.

### Relevant Laws

#### **Art. 135: Defamation**

1) Defamation, that is distribution of obviously false information defaming a person's honor, dignity or reputation, is punishable by a fine in the amount of up to 500 times the minimum monthly wage, or up to two years of correctional labor.

2) Defamation in public speeches, printed or multi-copied works or mass media, is punishable by a fine in the amount of 500 to 1,000 times the minimum monthly wage, or confinement for a period of two to six months, or imprisonment for up to two years.

3) Defamation: a) done jointly with a felony or especially grievous crime; b) for mercenary and other motives, is punishable by deprivation of freedom for three to five years.

**Art. 136: Insult**

- 1) Insult, that is abasement of honor and dignity, expressed in an indecent way, is punishable by a fine in the amount of up to 200 times the minimum monthly wage, or up to one year of correctional labor.
- 2) Insult: a) in public speeches, printed works or mass media; b) in connection with the discharge of the victim's public duty, is punishable by a fine in the amount of 200 to 500 times the minimum monthly wage, or up to two years of correctional labor.

**Art. 137: Insult and Slander of the President of the Republic of Tajikistan**

- 1) Public insulting the President of the Republic of Tajikistan or slander addressed to him, is punishable by a fine in the amount of 100 to 500 times the minimum monthly wage, or correctional labor for up to one year.
- 2) The same actions committed using press or other means of mass media, are punishable by correctional for up to two years, or imprisonment for a period of two to five years.

**Art. 330: Insulting an Official**

- 1) Public insult of an official while exercising his obligations, or in connection with its fulfillment is punishable by a fine of 500 to 1000 times the minimum monthly wage or correctional labor for a period of two months to one year, or confinement for a period of up to six months.
- 2) Insults used in the public speech, publicly demonstrated work, or in mass media are punishable by a fine of in the amount of 1,000 to 2,000 times the minimum monthly wage or confinement for a period of two to six months, or up to two years of imprisonment.

**Art. 355: Disrespect Toward a Court**

- 1) Disrespect towards a court resulting in insulting participants of a trial is punishable by a fine in the amount of up to 500 times the minimum monthly wage or confinement for a period of up to six months.
- 2) Insulting a judge, people's assessor or another person participating in administering justice, is punishable by correctional labor for up to two years or imprisonment for the same period.

**Art. 372: Insulting a Serviceman**

- 1) Insulting a military man by another military man during or in connection with the discharge of military service duties, is punishable by service restrictions for up to six months or detention in a disciplinary military unit for the same period.
- 2) Insulting an officer by a subordinate as well as a subordinate by an officer while performing military duties or in connection with the discharge of the duties, is punishable by service restrictions for up to one year or detention in a disciplinary military unit for the same period.

# Sub-Saharan Africa

Burundi

Cameroon

Central African Republic

Chad

Congo, Democratic Republic

Gambia

Lesotho

Liberia

Mali

Mauritania

Niger

Rwanda

Senegal

Sierra Leone

PARODY

Affront

SATIRE

Defamation of religion

LÈSE-MAJESTÉ

Irony

Disrespect

Mockery

INSULT

SEDITIONOUS LIBEL

Contempt

Blasphemy

Ridicule

Scorn

CARICATURE

Abuse

Protect Honor and Dignity

## **BURUNDI**

Population: 8.2 Million

Press Freedom Rating: Not Free

While the Constitution provides for freedom of expression, it is rarely honored in practice. The government often persecutes members of the media who dare criticize it. Much current law is vague about what a journalist may be charged for, a situation often exploited by government officials.

In 2006, legislation was proposed to delimit more accurately the rights and responsibilities of journalists in Burundi, but no progress on such lawmaking was made in 2007 or 2008.



### **Developments**

→ Jean-Claude Kavumbagu, the editor of the Net Press news web site, was arrested and jailed Sept. 11, 2008 for insulting the President in a report on how much he spent on his visit to the Beijing Olympic Games.

Kavumbagu was arrested and transferred to Mpimba prison after responding to a second summons from the prosecutor's office. When he was first summoned in August, he was notified that the government's Secretary-General had filed a complaint accusing him of libel and "insulting comments."

The complaint was prompted by an article accusing President Pierre Nkurunziza of spending 100 million Burundian francs (approx. US \$90,000) on attending the Olympic Games opening ceremony, whereas the government had given him half that sum for the trip. The article alleged this had delayed disbursement of civil servants' salaries.

### **Relevant Laws**

A transitional Constitution assures freedom of expression, but the 1997 Press Law dissemination of "information inciting civil disobedience or serving as propaganda for enemies of the Burundian nation during a time of war."

The November 2003 Media Law provides for fines and prison terms of up to five years for dissemination of information that insults the President or is defamatory or injurious to an individual.

## CAMEROON

Population: 18.2 Million

Press Freedom Rating: Not Free

The 1996 Constitution provides for freedom of the press and of speech, but in practice the government continued to restrict those rights in 2007 and 2008.

### Developments

→ A newspaper editor was given jail time for “spreading false news” about President Paul Biya following an article critical of the head of state and of the chief of the Cameroonian police. On Jan. 7, 2009, Lewis Medjo, editor of the weekly *La Détente Libre*, was sentenced to three years in jail and fined 2 million CFA francs (US \$4,200) on charges linked to an August 2008 story that reported that President Biya had urged the first president of the Supreme Court to take early retirement. Defense lawyers filed an appeal, but Medjo remains in Douala’s New Bell prison, where he reportedly has suffered two heart attacks and respiratory problems since being jailed Sept. 26, 2008, according to the Committee to Protect Journalists. *La Détente Libre* has not been published since.

→ Three other newspaper editors, Michel Mombio, Flash Zacharie Ndiomo and Armand Ondo, were held in Nkondengui Central Prison in the capital of Yaoundé, for more than three months facing criminal charges for insulting government officials.

→ In August 2007, a court sentenced Wirkwa Eric Tayu, the publisher of *The Nso Voice*, a small, private weekly, to one year in prison and fined him US \$1,800 on charges over an April 23 story on a government audit report linking the mayor of Kumbu with corruption. The charges alleged eight press offenses, including criminal defamation and publishing a supplement without authorization. The latter charge was particularly suspicious since the journalists’ trade union noted that many papers print supplements without special authorization.

Tayu, who went into hiding before the verdict, was sentenced in absentia. Tayu’s father, a local tribal elder, was detained for failing to produce his son. His publication, which was repeatedly searched after proceedings were initiated against it, halted operations after the verdict. *The Nso Voice* was known for critical coverage of the local government. Tayu was frequently harassed over that. For example, he was jailed for eight months in 2004 for allegedly defaming Kumbu’s mayor.

→ In April 2007, Georges Gilbert Baongla, the managing editor of the private weekly *Le Dementi*, was arrested on charges of printing obscene material in a story on a government minister’s alleged involvement in a homosexual scandal. In May 2007, Baongla received a six-month suspended sentence and was fined approximately US \$1,000.



## **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: 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 \$30-\$33,000). (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 \$30-\$33,000). (3) 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 ten days to one year imprisonment and/or a fine of 20,000 to 20 million CFA francs (approx. US \$30-\$33,000). 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 imprisonment and/or a fine of 5,000 to 2 million CFA francs (approx. US \$8-\$3,300), halved for non-public defamation, doubled for anonymous defamation.

Sect. 307: “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 \$8-\$165). (2) A complaint from 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.

## CENTRAL AFRICAN REPUBLIC

Population: 4.3 Million

Press Freedom Rating: Not Free

### Developments

→ On Jan. 28, 2008, Faustin Bambou, editor of the privately-owned weekly *Les Collines de l'Oubangui*, was sentenced to six months' imprisonment and a fine on charges of libel, insult and incitement to revolt.

The charges were based on the Dec. 21, 2007 issue of the weekly, which printed an article on alleged corruption by two government ministers.

Bambou was released Feb. 23, 2008, after six weeks in jail. He was pardoned by President François Bozizé.



## CHAD

Population: 10.5 Million

Press Freedom Rating: Not Free

Freedom of expression is increasingly restricted in Chad, and the outlook has gotten far bleaker since the government introduced a new press law in February 2008. It increases the maximum penalty for publishing false news and defamation to three years in prison, and for “insulting the President” to five years. The move came despite several previous promises by Chad’s government to liberalize the press law.



### Developments

→ December 2007: Nadjikimo Benoudjita, editor of the weekly newspaper *Notre Temps*, was charged with “inciting tribal hate” and insult. Benoudjita was arrested in the capital city of N’Djamena early one morning by armed men who did not have a warrant. He was imprisoned and released after four days.

His arrest came after an article he wrote accusing Chadian President Idriss Deby of carrying out targeted killings under former President Hissene Habré. The article alleged the killings were on the basis of the victims’ ethnicity. It also criticized French President Nicolas Sarkozy for supporting Deby’s government in the former French colony.

### Relevant Laws

Under a new law, the maximum penalty for publishing false news and defamation (Arts. 41 and 47) is increased to three years in prison, while the maximum penalty for “insulting the president” (Art. 48) is increased to five years.

Under Art. 15 of the old law, anyone wanting to start a newspaper needed only to file a declaration with the Ministry of Commerce. Now one must appear at the prosecutor’s office and the High Council of Communication. Previously, anyone publishing a newspaper only had to have a university degree. Now, under Art. 17, both the editor and publisher must have graduated from a journalism school.



## CONGO, DEMOCRATIC REPUBLIC

Population: 3.7 Million

Press Freedom Rating: Not Free



### Developments

→ On Jan. 7, 2009, Nsimba Embete Ponte, editor of the Kinshasa-based bi-weekly *L'Interprète*, was freed after serving a 10-month prison sentence.

N'Djili court of Kinshasa sentenced Ponte to ten months in jail on Nov. 27, 2008, for “insulting a head of state.”

Counting time already spent in a national intelligence agency (ANR - *Agence Nationale des Renseignements*) detention center and in a Kinshasa prison, Ponte was freed Jan. 7, having served his full sentence.

He was initially charged with “spreading false news,” “threatening state security,” and “insulting the head of state” in connection with a series of articles questioning the health of President Joseph Kabila. He was convicted of “insulting the head of state.”

Ponte and another *L'Interprète* journalist, Davin Ntondo, were arrested by intelligence officers in Kinshasa on March 7, and March 29, 2008, respectively. They were held secretly for three months at a detention center near the Prime Minister's offices along the Congo River. On June 6, they appeared briefly before a Kinshasa court and were transferred to Kinshasa's main prison, the CPRK (*Centre Pénitentiaire et de Rééducation de Kinshasa*).

### Relevant Laws

→ **Press Law (1996):** Insulting the Head of State or Prime Minister, publishing false information or “disturbing the public order,” punishable by six months to five years imprisonment and a fine of 100,000 to 5 million CFA francs (approx. US \$165-\$8,200). Journalists employed by state media have a legal duty to be “loyal to the government.”

→ **2004 Code of Deontology and Ethics for Journalists: Duties of Journalists Section 5:** bans insults, defamation, allegations, alteration of documents, twisting of facts and misrepresentations. The section additionally bans incitement of hatred (ethnic, religious, regional, and racial) and any other form of support of negative values in the media.

## GAMBIA

Population: 1.7 Million

Press Freedom Rating: Not Free

Gambia's Constitution guarantees freedom of expression, but the government does not respect it. Constitutional guarantees are also undermined by other legislation, primarily the Newspaper Amendment Act and a penal code amendment, both passed in 2004. The latter established publication of "false information" as an offense carrying stiff penalties, and mandated harsh punishments for sedition and libel.



### Developments

➔ In March 2007, US-based journalist and political commentator Fatou Jaw Manneh was arrested at the airport as she returned to Gambia for her father's funeral. According to the Committee to Protect Journalists, Manneh was charged with sedition for a 2004 interview published in the now defunct *Independent*, strongly criticizing the government, calling President Yahya Jammeh "a bundle of terror" and an "egoistic, frosty imam." She was released on bail after a week but was barred from leaving the country.

➔ Chief Ebrimah Manneh, correspondent for the state-owned *Daily Observer*, remained missing following his arrest in July 2006 by security agents. He was reportedly detained over allegations of passing damaging information to a foreign journalist who wrote an article criticizing the regime before a 2006 African Union summit in the capital of Banjul.

The Media Foundation of West Africa filed suit in the Community Court of Justice of the Economic Community of West African States in Nigeria, seeking Manneh's release. In September 2007, the International Federation of Journalists expressed fears that Manneh had died in custody.

➔ On Sept 9, 2007, Mam Sait Ceesay, a former editor of the *Daily Observer*, and journalist Malick Jones, of the state-owned Gambia Radio and Television Services (GRTS), were arrested and held incommunicado by the Gambian Police Force at two different stations. While initially no official reasons were specified for the arrest and detention, three days later the two journalists were arraigned before the Banjul Magistrates' Court and charged with "passing information to a foreign journalist, contrary to Section 4 of the Official Secret Act of the Laws of The Gambia." The charges were based on a Sept. 7 article in the *Daily Observer*, claiming that Ebrima J.T. Kujabi, President Jammeh's press secretary, had been replaced. Ceesay and Jones were alleged to have given "false information" for publication. The paper retracted the story and published an apology.

On Sept. 12, the court granted them bail. Unable to pay the bail of about US \$6,500, they were rearrested by Gambian police. Ceesay paid his bail a week later and was released Sept. 18. Jones was paid Sept. 21 and was immediately released. On Sept. 26, the journalists appeared in court to plead not guilty to violating the Official Secret Act. Proceedings against the two were suspended that same day, after their defense counsel argued that the case was filed without a decree by the Attorney General required by law. No date was fixed for continuation of hearings.

### **Relevant Laws**

The Newspaper Amendment Act of 2004 requires private newspapers and journalists to execute bonds of 500,000 Dalasi (approx. US \$20,000), four times the previous bond requirement and considered so large as to have the effect of shutting down the private newspapers. The Act also requires newspapers to register with the Registrar General.

The Criminal Code Amendment Act expands the definition of libel and provides for harsh imprisonment terms of not less than six months in jail, without the option of a fine, for first time offenders for “seditious and libelous” publications. Repeat offenders may be sentenced to not less than three years in jail, without the option of a fine. Any media used in the alleged seditious publication would be “forfeited to the State.” The legislation was adopted by the Gambian National Assembly in December 2004.

## LESOTHO

Population: 2 Million

Press Freedom Rating: Partly Free

Lesotho is notorious for its insult laws. Senior politicians and government officials use them against the media to seek hefty compensations.

### Developments

→ A defunct Lesotho weekly, *The Mirror*, its editor and EPIC Printers were given a 50,000 Maloti (approx. US \$6,000) fine by the High Court of Lesotho on Sept. 29, 2008 for insulting Lesotho Prime Minister Pakalitha Mosisili.

Justice Nomngongo said the publication, its editor and EPIC Printers were jointly convicted and ordered to pay the fine.

Mosisili had sought 250,000 Maloti (approx. US \$30,000) for the story published in *The Mirror* on April 11, 2001 called “Truth is a mountain, the Mosisilism seeks to take it on.” The court said the story made highly defamatory insinuations.

The judge said the newspaper’s allegations against Prime Minister Mosisili imputed opportunism, dishonesty, criminality and even sadism by him and his associates.

“There was no justification whatsoever for those allegations and the defendants negligently published them without bothering to establish their truthfulness,” said the judgment.

*The Mirror* stopped publishing in 2005, citing financial difficulties.



## LIBERIA

Population: 3.6 Million

Press Freedom Rating: Not Free

Liberia's 1986 Constitution guarantees that citizens enjoy freedom of expression, "being fully responsible for the abuse thereof." In 2007, the government announced that, from then on, the President's press secretary and the Ministry of Information would select the individual reporters who would cover the President. The rest of the media would be banned from doing so.



### Developments

➔ In March 2008, *The National Chronicle* daily was threatened with a lawsuit by a member of President Ellen Johnson Sirleaf's inner circle. Liberia Petroleum Refinery Co. Managing Director Harry Greaves threatened to sue the newspaper unless it retracted a March 31, 2008 story attributed to him, titled: "For Greed of Power and Wealth: Harry Greaves Financed Taylor's War-Killed 250,000 Innocent Liberians." Greaves said the story was a deliberate attempt to defame and insult his good name and reputation. *The National Chronicle*'s managing editor, Emmanuel Akyempong, said he stood by the story and that the paper would not retract a truthful story.

➔ In October 2007, Ambrose Nmah, general manager of Renaissance Communication Inc., sued six other journalists from different media for libel. This followed their simultaneous publication of a statement calling on the Liberian Press Union to investigate Nmah after radio comments he made justifying use of police force against journalists. Nmah demanded US \$10,000 for insulting and damaging his reputation.

➔ In July 2008, Raymond Louw, the Editor and Publisher of *Southern Africa Report* and Africa Representative of the World Press Freedom Committee wrote to President Johnson-Sirleaf explaining WPMC's campaign against insult laws. Louw wrote:

"In reality these laws are mostly used to protect government officials and especially the head of state and parliamentarians from justifiable criticism of their conduct in office and mismanagement of governance. Laws used in this way place enormous restrictions on the professional activities of the media and prevent the public from knowing what is happening and thus obstruct the furtherance of democracy.

"Our research shows that there are only five of the 53 countries in Africa which have freed themselves wholly or partially from these laws which are a legacy of colonialism...

"We understand that there are laws repressing the media in Liberia -- some describe the national media as suppressed, indeed one description refers to it being 'tightly controlled' with journalists suffering detention and imprisonment -- and we believe that your mission suggests that your government should review them. ..."

## MALI

Population: 12 Million

Press Freedom Rating: Free

Mali's Constitution protects the right of free speech and the country's news media have historically been among the freest in Africa. But in 2007 and 2008 official actions against journalists stained that record. A 1993 law provided severe penalties for libel. While legislation in 2000 reduced the maximum penalty, the accused still remain guilty until proven innocent.



### Developments

➔ In June 2007, Seydina Oumar Diarra, an editor for *Info-Matin*, printed an interview with Bassirou Kassim Minta, a 10th grade teacher who had assigned an essay on a fictional sex scandal involving a president and his mistress. On June 14, Diarra was interrogated for several hours, then charged with “offending a head of state,” and jailed. It was the first imprisonment of a journalist in Mali since 2003. The teacher was jailed on the same charge. It carries a prison term of up to one year and a fine up to US \$1,200.

In protest, several newspapers, including *Info-Matin* itself, reprinted the article. In response, *Info-Matin* editor Sambu Touré and Ibrahima Fall of *Le Républicain*, Alexis Kalambry of *Les Echos* and Haméye Cissé of *Le Scorpion*, were also jailed on June 20. All were charged with “complicity in an insult against the President.”

The State's harsh reactions prompted a journalists' demonstration at the Justice Ministry. Ibrahim Famakan Coulibaly, President of the Malian Journalists Association and of the West African Journalists Association, was beaten by police during the protest. Security officers also tried to break it up by tear-gassing the 200 demonstrating journalists.

The arrested journalists and teacher were tried June 26. Diarra was sentenced to 13 days in prison, already served in pre-trial detention. Minta was sentenced to two months' jail and fined US \$205, and banned from teaching. The editors got suspended sentences, Touré for eight months, the others for three months.

➔ In March 2007, a court sentenced Diaby Macoro Camara and Oumar Bore, the managing editor and editor-in-chief of the monthly *Kabako*, to four-month suspended sentences and fines of about US \$100 for defaming Planning Minister Marimantia Diarra in a 2006 article alleging he had tried to threaten his former fiancée with physical force.

### Relevant Laws

A 1993 law makes libel a criminal offense and provides severe penalties. In 2000, a law reduced the maximum penalty, but accused remain guilty until proven innocent. The 1993 law provides prison terms for libel and for public insult of the President, other officials, and foreign diplomats. The law does not define insult.

## MAURITANIA

Population: 3 Million

Press Freedom Rating: Partly Free

Despite a constitutional guarantee of free expression, newspapers are subject to closure for publishing materials seen to denigrate Islam or to pose a threat to national security. During 2007 and 2008, journalists faced threats of imprisonment and even physical harm for stories considered libelous.



### Developments

→ Mohamed Nema Oumar, publisher of the Arabic-language weekly *Al-Houriya*, was arrested June 12 after accompanying the President on an official visit to Libya. In a complaint by Sen. Mohsen Ould El Hadj, Oumar was accused of insult and defamation for article critical of the senator's participation in celebrations of the 60th anniversary of Israel, which Mauritania recognizes.

Oumar was released June 13, 2008 after being held for 30 hours. He was charged two days later with "libel and insult" and ordered to report to the police twice a week pending trial. His passport was confiscated and he was banned from leaving the country for two months.

The case had originally been shelved by the deputy public prosecutor after the senator failed to appear for a court hearing. But the prosecutor had reinstated the charges June 9 and had issued an order for Oumar to be placed in pretrial detention.

→ On Feb. 11, 2008, Abdel Fettah Ould Abeidna, managing editor of the daily *Al-Aqsa*, was sentenced to one year in prison for insulting a local businessman. In a May 16, 2007 article, Abeidna linked the businessman to a large-scale cocaine racket in which a number of politicians were implicated. Abeidna had reportedly gone abroad.

→ In Aug. 2007, First Lady Khattou Mint El Boukhary charged the daily *El Bedil Ethalith* with libel and insult over a report alleging she attempted to influence hiring at national television. Also in August, she accused Sidi Mohamed Ould Ebbe, the paper's editor, of libel and insult over reports alleging she used her public role to raise private charity funds. She withdrew the suits in December, however.

### Relevant Laws

#### **Penal Code**

**Art. 348:** A "false accusation" is punishable by five months to two years in prison.

#### **Press Law**

Newspapers may be banned for undermining Islam or threatening national security.

## NIGER

Population: 13.7 Million

Press Freedom Rating: Not Free

For several years, the government in Niger has clamped down on dissenting media, often through the courts. This is aggravated by “a legal and institutional framework that is not only restrictive, but abusive,” according to the Article 19 organization. It says there has been continual backsliding on press freedom under President Mamadou Tandja.



### Developments

➔ Aboubacar Gourouza, the editor of *L'Eveil Plus* weekly newspaper, was arrested Feb. 26, 2008 after a former leader of the ruling MNSD party, Moussa Keita, said he was defamed and insulted by an article on Jan. 29. It said that Keita was implicated in a plot to convict the President of MNSD and former Prime Minister Hama Amadou for “complicity in the arson of a car.”

➔ On Feb. 8, 2008, Ibrahim Souley and Soumana Idrissa Maiga, managing editor and founder of the bi-monthly publication *L'Enquêteur*, were each sentenced to one month in jail on libel charges filed by the Finance Minister. The charges concerned articles printed Nov. 19, 2007 alleging that the Minister was involved in illegal grants of state projects and encouraged mismanagement of public finances. Souley and Maiga were also ordered to pay the Minister symbolic fines of 40,000 Francs (US \$75) each.

➔ In October 2007, the High Communications Council (CSC), the media regulatory body of Niger, threatened to withdraw the license of any broadcast station that allows journalists to criticize the CSC. The CSC president, Daouda Diallo, accused the private media of providing a platform for certain journalists to insult CSC members. He said the CSC would not hesitate to shut broadcast stations and to sue those who attack members.

### Relevant Laws

#### **Press Law (June 24, 1997)**

**Art. 52:** A journalist may not report any piece of news that could be considered defamatory, “even if it is in the conditional tense.”

**Art. 55:** “Any offense to the President of the Republic or to the person who is exercising all or part of his prerogatives” is punishable by two to five years in prison and a fine of 200,000 to 5 million CFA francs (approx. US \$330-\$8,200). In such cases, the court may not grant the defendant the benefit of extenuating circumstances or suspend the sentence.

**Art. 68:** Specifies who is liable for any violation of the law: the director of the publication, the author of the offending piece, the printer and the vendor.



## RWANDA

Population: 9.5 Million

Press Freedom Rating: Not Free

The government reacts harshly to reporting it sees as negative. It often punishes journalists, closes newspapers, and forces writers into exile. The private media has withered under President Paul Kagame. Reporters Without Borders has called him one of the world's "Predators of Press Freedom," saying: "The government attacks any journalist, foreign or local, who puts out news it does not like, or which violates the taboos of the society built by the Rwandan Patriotic Front ... President Kagame tolerates no embarrassing questions at press conferences, frequently insults independent journalists...."



### Developments

➔ On Feb. 8, 2008, Charles Kabonero and Didas Gasana, managing editor and chief editor of the weekly *Umuseso*, were sentenced to one year in prison and fined approx. US \$2,000. They were convicted of insulting a businessman close to the government. The May and June 2007 issues of *Umuseso* printed articles describing the businessman's alleged financial problems. The sentence was on appeal.

### Relevant Laws

#### **Law on the Press of the Republic of Rwanda:**

**Art. 74:** A journalist shall not engage in plagiarism, slander, insults, defamations and groundless accusations. He may not accept any incentive whatever for the publication or suppression of information.

**Art. 89:** 1. Publication of false news, slander and insults, as well as publications that interfere with law and order or morality shall be sentenced to the maximum allowable punishment in the Penal Code.

2. Any offense committed by the press against the President of the Republic, flagrant insults delivered through the press against a foreign Head of State and foreign diplomatic personnel, defamation and insults through the press directed at personnel in government and in charge of enforcing the law shall be punished by the maximum penalty provided in the Penal Code.

3. Any person convicted of one of the following infractions shall be punished by imprisonment for one to 15 years and a fine of 50,000 to 1 million francs (approx. \$90 to \$1,800), or to only one of the above:

- incitement to or justification of war crimes, terrorism, genocide and other crimes against humanity.
- incitement to discrimination, hatred or violence against a person or group of people because of their origin, their appearance or the fact that they do not belong to an ethnic group, a nation, a race or come from a given region.

## SENEGAL

Population: 12.1 Million

Press Freedom Rating: Partly Free

In 2007, President Abdoulaye Wade recommended that journalists seek feedback from officials before publishing stories covering the government, adding that it was in the government's interest to "maintain a positive image" of the country.



### Developments

- ➔ On Sept. 12, 2008, El Malick Seck, editor-in-chief of the *24 Heures Chrono* daily, was sentenced to three years in prison for publishing false news, inciting the public and public insult. The court cleared him on two other offenses of insulting the head of state, and possessing illegal documents. His newspaper, based in the capital of Dakar, was banned for three months. This followed an article in August 2008 linking President Abdoulaye Wade and his son to money laundering from the Ivory Coast. On Dec. 2, 2008, an appeal court rejected a bail request for El Malick Seck.
  
- ➔ In November 2007, Pape Amadou Gaye, managing editor of *Le Courrier*, was detained and charged with offending the State for an article holding the President responsible for the rising cost of living.
  
- ➔ In November 2007, El Malick Seck, as the editor of Rewmi.com, a news site, was arrested and charged with insulting and offending President Wade after online readers criticized his purchase of a new limousine while the country was in economic difficulties.
  
- ➔ In October 2007, Moussa Gueye, managing editor of the daily newspaper, *L'Exclusif*, and Pape Moussa Doucar, the newspaper owner, were arrested, imprisoned, and charged with several offenses, including offending the head of state, publishing false news, and endangering public security after their paper ran a front-page story by reporter Justin Ndoye titled "Late Outings at the Presidency: The Nocturnal Escapades of President Wade." Ndoye went into hiding after the story was printed. Police issued an arrest warrant for him. Other staff members went into hiding, and the paper stopped publishing.
  
- ➔ In April 2007, Ndiogou Wack Seck, director of the pro-government daily *Il Est Midi* was sentenced to six months in jail, fined US \$90,000 for criminal defamation, and barred from work as a journalist for three months. The newspaper was also suspended for that time. This was in response to publication in November 2006 of a story criticizing close associates of President Wade for the release of an imprisoned ex-prime minister.
  
- ➔ In March 2007, after being convicted of defamation, Jean Meissa Diop, the director of *Walf Grand-Place*, and the newspaper's reporter, Faydy Drame, were each sentenced to suspended six-month prison terms and fines of US \$23,000. The charges followed articles in June 2006 regarding alleging that a local car dealership may have sold defective vehicles. The paper had published both the allegations and the dealership's reply.

## Relevant Laws

### **Penal Code**

**Art. 254 (1977):** 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 six months to two years imprisonment and/or a fine of 100,000 to 1.5 million francs (approx. US \$165-\$2,500). The penalties . . . apply to offense to a person who exercises all or part of the prerogatives of the President of the Republic.

**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 francs (approx. US \$165-\$2,500) 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 francs (approx. US \$330- \$2,500).

**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 francs (approx. US \$165-\$1,650). 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 francs (approx. US \$80-\$820) when its purpose is to excite 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 francs (approx. US \$30-\$165). 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 francs (approx. US \$30-\$165). 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 exciting hatred among citizens or inhabitants, the maximum penalty will be imprisonment for six months and a fine of 500,000 francs (approx. US \$8,200).

**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 governments 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 francs (approx. US \$165-\$2,500).

**Art. 266:** Grave offense committed publicly, while they are fulfilling their functions, against ambassadors and plenipotentiary ministers, envoys, chargés 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 francs (approx. US \$165-\$1,650).

## SIERRA LEONE

Population: 5.7 Million

Press Freedom Rating: Partly Free

### Developments

→ On May 6, 2008, the press secretary to State House, Sheka Tarawally, threatened *New Vision* with legal action if the newspaper did not retract articles alleging wastefulness by President Ernest Bai Koroma.



Tarawally lodged a formal complaint with the Independent Media Commission, Sierra Leone's media regulatory body, calling on it to urge *New Vision* to retract the three articles within three days or face legal action.

The first article, published May 2, accused Koroma of spending US \$102 million on unnecessary trips. On May 5 and 6, the paper ran articles repeating the allegations and stating that *New Vision* stood by its reports.

The press secretary claimed that *New Vision* had not tried to check the information, and so the story should be seen as "malicious and calculated to damage the image of the President.." Tarawally also said, "all the insinuations in the offending articles are false" and concluded that *New Vision* had violated sections of the 1965 Public Order Act.

→ Silvia Blyden, publisher of the newspaper *The Awareness Times*, based in the capital of Freetown, was arrested March 5, 2008 by the Criminal Investigations Department of Sierra Leone police for allegedly ridiculing President Ernest Bai Koroma. She was freed later the same day.

In its Feb. 29 edition, *The Awareness Times* published a caricature of President Koroma with horns. This, according to the acting CID Director, Amara Sesay, was a mockery of the President. A police source said the journalist would be formally charged with "ridiculing the President," an offense under the Public Order Act of 1965.

→ On Feb 9, 2008, Justice Minister Abdul Serry-Kamal announced that the Law Reform Commission was to start work on repeal of the country's criminal libel laws. Vice President Samuel Sam Soumana reportedly asked the Commission "to expunge all laws dealing with freedom of expression including the 1965 Public Order Act which makes libel a criminal offense." The law allows the government to jail a journalist who makes a mistake or whenever publishes a story that displeases the government.

In February 2008, the Sierra Leone Association of Journalists sued the government over sections of the criminal libel law that endanger press freedom. SLAJ said Sections 26-33 of the Public Order Act of 1965 "are inimical to the practice of journalism in the country."

**Relevant Laws****The Public Order Act of 1965**

**Art. 26:** 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.

**Art. 27:** 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.

**Art. 32:** (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.

# Latin America

Argentina  
 Brazil  
 Chile  
 Colombia  
 Mexico  
 Uruguay

CARICATURE

SCORN

Ridicule

Blasphemy

Contempt

Abuse

SEDITIONOUS LIBEL

INSULT

Offense

Protect Honor and Dignity

Mockery

Irony

Disrespect

PARODY

SATIRE

outrage

Affront

Defamation of religion

LÈSE-MAJESTÉ

## ARGENTINA

Population: 39.1 Million

Press Freedom Rating: Partly Free



The Inter-American Court of Human Rights has twice enjoined Argentina to decriminalize defamation, first in 1999 and again in 2008. There has been a bill before Congress finally to turn defamation into a civil offense. It was backed by the Special Rapporteur for Freedom of Expression of the Organization of American States, local press freedom groups, and WPFC. In 1999,

a Senate committee approved a similar bill, but it never reached the full Senate, and has been on and off the legislative agenda for years. The new bill, introduced by opposition Rep. Marcela Rodriguez, includes the “actual malice” standard, set by the US Supreme Court in the 1959 case of *New York Times v. Sullivan*. Plaintiffs in civil libel cases would be required to prove not only that published information was false but also that the journalists knew or should have known it to be false.

### Developments

➔ On Oct. 11, 2007, the World Press Freedom Committee submitted an *amicus curiae* brief to the Inter-American Human Rights Court for Argentine journalist Eduardo Kimel, whose criminal defamation case could trigger historic reforms should the regional tribunal order them.

Kimel’s legal battle began in 1991 with publication of his book *La massacre de San Patricio* (The St. Patrick’s Massacre), an exposé of the 1976 killings of three priests and two seminary students in Belgrano, Argentina during the military dictatorship. The killers are still at large, and Kimel’s investigation concluded that the judge on the case, Guillermo Rivarola, was negligent because it was clear that the order to murder the five came from the military junta.

Judge Rivarola filed defamation charges against Kimel, who was sentenced to one year in prison and a US \$20,000 fine. The Inter-American Human Rights Court took the case upon the recommendation of the Commission and the OAS Special Freedom of Expression Rapporteur.

“The current criminal defamation laws in Argentina can have the same effect as the infamous insult laws, which that country eliminated in 1995,” said WPFC’s Executive Director, Mark Bench. “The Kimel case demonstrates that the elimination of insult laws possess no obstacle for Argentinean judges to restrict freedom of expression. We join our voices to that of the Inter-American Commission on Human Rights urging the Court to order the Argentine State to decriminalize its defamation laws.”

The Commission believes this case could be a landmark in the region because “it constitutes an opportunity for the development of inter-American jurisprudence about the



incompatibility of laws criminalizing speech or opinions that are critical of the performance of public officials.”

“Public officials must be subject to a higher level of scrutiny from the rest of society,” says WPFC’s *amicus curiae* brief. “Therefore, those laws that allow criminal penalties for defamation, especially those that are applied against journalists and the news media, must be eliminated in all those nations where they exist, including Argentina.”

On May 2, 2008, the Inter-American Court ruled on the case that the laws that protect against slander and libel in Argentina violate the American Convention on Human Rights. The Court’s decision therefore requires the State to modify them. Eduardo Bertoni, a lawyer representing Kimel, said the “impact of this ruling will affect the whole region, as the majority of Latin American countries share similar laws on these issues.”

Bertoni said: “The Inter-American Court of Human Rights ordered the Argentine State, as a form of reparation, to adjust its domestic laws to the American Convention on Human Rights. It also ordered the State to pay damages to Eduardo Kimel, to annul the effects of the criminal and civil sentences, to publish the ruling of the Inter-American Court and to organize a public act to assume responsibility for the foregoing violations, within less than six months of the publication of the judgment.”

“This ... ruling contributes to a growing, continent-wide movement to limit the criminalization of political criticism and other forms of expression in the public interest,” Bertoni said, adding, “It is expected that this sentence will impact not only Argentina, but also the rest of the countries of the region, strengthening the free exchange of ideas and, in effect, our democracies.”

➔ Héctor Martínez, a federal judge in Salta Province, dealt a blow to Argentine journalism in 2007 when he gave journalist Sergio Poma a one-year suspended prison sentence on a criminal slander complaint brought by the local governor, Juan Carlos Romero, and barred him from working for one year. Since 2001, Poma, the owner of local radio station FM Noticias and co-founder of the Association of Salta Journalists (APES), had been the target of death threats, vandalism, and economic pressure for his investigations into government corruption and the alleged links between local politicians and regional drug traffickers. Poma had three other criminal slander cases pending – one filed by the governor, another by the governor’s brother, and the third by the governor’s secretary. But he died of cancer on Jan. 11, 2008.

## **Relevant Laws**

### **Penal Code**

**Art. 109:** Slander or false accusation of a crime that is grounds for a public trial shall be punished by a prison term of one to three years.

**Art. 110:** He who dishonors or discredits someone else shall be sanctioned with a fine of 1,000 Argentine Pesos (approx. US \$ 260) to 100,000 Argentine Pesos (approx. US \$26,000) or a prison term of one month to one year.

**Art. 111:** A person accused of libel may only prove the truth of the accusation in the following cases:

- 1) If the accusation was for the purpose of defending or guaranteeing an issue of current public interest;
- 2) If the fact attributed to the offended person should have led to a penal trial;
- 3) If the plaintiff were to request proof of the accusation directed at him.

In these cases, if the truth of the accusations is proved, the accused would be exempt from punishment.

**Art. 112:** The accused of slander or ambiguous libel or deceit who refuses during trial to give satisfactory explanations for the impression that was created, shall be sanctioned by at least half the punishment related for a clear slander or libel.

**Art. 113:** He who should publish or reproduce, by any means, defamatory statements made by another person shall be punished as the author of the libel or slander involved.

**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.

**Law 23.592** which concerns discrimination, provides in its Art. 2 an increase by at least a third and by no more than half the penalties for all violations of law foreseen in the Penal Code or complementary laws when they are committed because of persecution or hatred toward a race, religion or nationality, or with the purpose of destroying, in whole or in part, a national ethnic, racial or religious group.

## BRAZIL

Population: 189.3 Million

Press Freedom Rating: Partly Free

Despite important advances since the return of democracy in 1984, freedom of expression in Brazil continues to face significant obstacles. The 1988 Constitution calls freedom of information a fundamental right. However, several federal courts continue to use a 1967 law, passed under a military dictatorship, to prosecute journalists. In December 2007, the Congress considered scrapping the 1967 law.



### Developments

➔ On Feb. 27, 2008, Brazil's Federal Supreme Court confirmed a preliminary decision, proposed by Judge Carlos Ayres Britto on Feb. 21, to suspend application of 20 of the 77 articles of the 1967 Press Law. This law, inherited from the military dictatorship, provides for prison sentences for offenses of "insult, denigration and defamation." The law is no longer applied at the federal level since it conflicts with the 1998 Constitution, but is still used against journalists in some states. Reporters Without Borders called the Court's move "an irreversible step towards decriminalization of press offenses."

➔ On June 21, 2007, the mayor of the northeastern city of Salvador de Bahia, João Henrique, got a court to forbid the Metr pole media network (which includes a radio station, magazine, web site and blog) from mentioning his name. If the group violates the ban, it will be fined. The court also seized 30,000 copies of the group's free magazine with a cartoon of the mayor on its cover.

Metr pole chairman M rio Kert sz was Salvador's mayor twice in the past (1979-1981 and 1986-1989). He has used his media to feud with his successor, whom he refers to in his blog as the "unspeakable one."

➔ On Feb. 9, 2007, a court in the southern state of Santa Catarina banned the daily *Gazeta de Joinville* from mentioning the names of Joinville Mayor Marco Tebaldi, his wife, and Taiza Thomsen, a former Miss Brazil, after the paper reported on an alleged love affair between the mayor and the former beauty queen. The "preventive censorship" order provided for a fine for each day that the paper might violate the ban.

### Relevant Law

**Penal Code, 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.

## CHILE

Population: 16.4 Million  
Press Freedom Rating: Free

The Chilean media enjoy a relatively free media climate. The Constitution provides for press freedom, and both the print and broadcast media routinely criticize the government and cover sensitive issues.

The 2001 press freedom act, signed into law by President Michelle Bachelet's predecessor, Ricardo Lagos, repealed some of the most punitive provisions of the country's State Security Law (*Ley de Seguridad Interior del Estado*), including Art. 6b, which made it a crime to "libel, offend or slander" senior officials. But the amended law did not abrogate all insult (*desacato*) provisions.



### Developments

➔ The Chilean Supreme Court found journalist Víctor Gutiérrez guilty of criminal defamation on Oct. 28, 2008, and sentenced him to a suspended prison sentence.

The high court sentenced Gutiérrez to a 61-day suspended prison sentence, and ordered him to pay a 240 Pesos (approx. US \$358) fine, as well as 30 million Pesos (approx. US \$46,000) in damages to Cecilia Bolocco, a former Miss Universe and ex-wife of former Argentine President Carlos Menem, who Gutiérrez was accused of insulting.

The case stems from appearances Gutiérrez made in August 2001 on the television programs *Día a día* (Day to Day) on Televisión Nacional de Chile (TVN) and *Memoria* (Memory) on the Argentine national station Azul TV, alleging that Bolocco had an affair with Brazilian writer Paulo Coelho while she was already in a relationship with Menem, according to reports in the Chilean and international press. In August 2005, Santiago's 20th Penal Court found Gutiérrez guilty of defamation, and on May 7, Santiago's Appeal Court ratified the sentence.

On Nov. 4, 2008, the WPFC wrote a letter to the President of the Supreme Court, expressing "its profound rejection of the Chilean Supreme Court's decision." Executive Director Mark Bench said: "We consider this decision an attack on press freedom and on the human rights of Mr. Gutiérrez, and more importantly, of his audience. These rights are consecrated in the Chilean Constitution. Chile is also bound by two major international documents: Section 13 of the American Convention on Human Rights, as applied by the Inter-American Court of Human Rights, and Art. 19 of the UN Universal Declaration of Human Rights. The exorbitant nature of the monetary punishment which Mr. Gutiérrez has already said he cannot afford is so out of proportion with the harm inflicted upon Ms. Bolocco that it clearly constitutes a violation of these and other principles of free expression.

“Both the jurisprudence of the Inter-American Court and the recommendations of the UN Commission on Human Rights support the concept that public persons should expect more, and not less, scrutiny and criticism from the rest of society. This acceptance of being a willing target of the media’s slings and arrows implies celebrities should restrain themselves from using these laws in order to silence criticism directed at them.

“Both institutions also state that criminal defamation and insult laws, in the hands of public persons, can become a potent censorship tool to shield themselves from the scrutiny of the press and the rest of society. This legal feature, of great toxic power, is typical of autocratic regimes and not of democratic nations such as Chile.

“International human rights jurisprudence recommends that all laws that allow criminal penalties for defamation, particularly those that are applied against journalists and media outlets, should be decriminalized in all the countries where they exist, including Chile. Likewise, they maintain that any fines that were to result from civil proceedings ought to be applied in a sensible way so they do not become tools of intimidation that impede the necessary flow of information in a democratic society.”

### **Relevant Laws**

Libel is sanctioned by Arts. 412 to 415 of the Penal Code; slander by Arts. 416 to 420; and Arts. 421 to 431 contain regulations common to both.

### **Penal Code**

**Art. 6:** A crime against the public order is committed by those who publicly insult the flag, the coat of arm or the national anthem, and those who defame, slander or libel the President of the Republic, Ministers of State, Senators or Representatives, members of the Supreme Court of Justice, Attorney General of the Republic or Commanders in Chief of the Armed Forces, regardless of the fact that the defamation, libel or slander committed may be due to the functions of the aggrieved party.

### **Code of Military Justice**

**Art. 284:** The punishment for anyone who threatens, offends or defames, verbally, in writing or using any other means, the Armed Forces, one of its members, units, divisions, or specific class or corps, shall be from lesser incarceration, confinement or exile of medium degree to major incarceration, confinement or exile of minimum degree.

**Art. 417:** The punishment for anyone who threatens, offends or defames, verbally, in writing or using any other means, the Police, one of its members, units or divisions shall be from lesser incarceration, confinement or exile of medium degree to major incarceration, confinement or exile of minimum degree.

WPFC noted in its Nov. 4, 2008 letter to the President of Chile’s Supreme Court that while Arts. 263 and 265 of the Penal Code were eliminated, the amended language of Art. 264 is problematic. It now reads: “Typical illegal conducts are those that offend and threaten a senator or representative because of his statements in Congress, that offend or

threaten a judge because of the decisions he has passed down, that offend or threaten any other public official in the line of duty.”

WPFC acknowledged that the word “insult” was eliminated. But in its place two other toxic terms -- “offend” and “threaten” -- were inserted. WPFC said that the implications of such wording are that any public official-- including guards at the Congressional parking lot -- may invoke this law against any person who defies a public official. The law provides ample latitude for an official to allege that he/she was “threatened” by such opposition, WPFC said.

## COLOMBIA

Population: 45.6 Million

Press Freedom Rating: Partly Free



### Developments

➔ A criminal court judge issued an arrest warrant for *Semana* magazine editor Alejandro Santos after concluding that the magazine failed to comply completely with a court order. The arrest warrant called for Santos' detention for three days and levied a fine equivalent to six months of salary at minimum wage. The decision resulted from a complaint filed by Judge José Alfredo Escobar Araújo, of the Superior Council of the Judiciary (*Consejo Superior de la Judicatura*).

Escobar Araújo began the proceedings against *Semana* after the magazine published an article titled, "The 'patrons' of justice" on April 28, 2008. Following two previous rulings, the magazine twice published corrections of the article.

In the article, *Semana* discussed the relationship of a man named Ascencio Reyes with the Federal Attorney General (*Fiscal General de la Nación*) and various judges of the Supreme Court (*Corte Suprema de Justicia*) and the Superior Council of the Judiciary (*Consejo Superior de la Judicatura*). The article discussed Reyes' influence in the senior Colombian judiciary and his apparently close relationships with various judges.

Escobar Araújo appealed for legal protection against Santos' actions as the editor of *Semana*, alleging that the article violated his honor, good name and privacy. The appeal stressed the article's alleged errors. On Aug. 11, a criminal court judge ruled for Escobar Araújo and ordered the magazine to print a correction. On Sept. 12, however, the Bogotá Judicial District Superior Court ruled that the correction was inadequate and gave precise instructions on how it was to appear and the names of the persons it was to include.

*Semana* published a new correction which the judge also deemed inadequate. He gave the magazine 24 hours to explain why it had not complied, in addition to insisting that the magazine print a new correction on its next front cover. The magazine refused. An arrest warrant was issued for Santos. This ruling may be reviewed by the Superior Court (*Tribunal Superior*), which was considering an appeal.

WPFC Executive Director Mark Bench wrote two of the Bogota court judges, urging them to end the judicial harassment and to close the case, adding: "International human rights jurisprudence recommends that all laws that allow criminal penalties for defamation, particularly those that are applied against journalists and media outlets, should be decriminalized in all the countries where they exist, including Colombia. Likewise, they maintain that any fines that were to result from civil proceedings ought to be applied in a sensible way so they do not become tools of intimidation that impede the necessary flow of information in a democratic society."

## **Relevant Laws**

### **Constitution**

The 1991 Constitution provides the right to privacy in Art. 15 and contains related provisions, for example, Arts. 21 (good reputation) and 28 (individual freedom).

**Art. 15:** All individuals have the right to personal and family privacy and to their own good name, rights that must be protected by the State.

**Art. 21:** Guarantees the right to good reputation.

A 1992 ruling by the Constitutional Court concluded that in conflicts between the right to privacy and the right to information, the right to privacy prevails because it is a necessary consequence of human dignity, consecrated as a fundamental principle and essential value. The right to privacy may be limited only to safeguard genuine general interest as proclaimed in the Constitution (Ruling T-414, June 1992.)

### **Penal Code**

#### **Art. 314: Libel**

Falsely accusing an individual of a punishable act, penalized by imprisonment for one to four years.

#### **Art. 315: Indirect slander and libel**

Offenses committed by publishing, reproducing or repeating libel or slander imputed by others, or when these accusations are made impersonally or with such expressions as “it is said,” “it is assured” or similar phrases. Such offenses are subject to penalties established in the above provisions.

**Art. 316:** Provides for increased penalties if the illegal act is committed in social communication or collective dissemination media, or at a public meeting.

**Art. 317:** Provides as exculpatory conditions proof of the truth of the accusations (*exceptio veritatis*), and makes the exception that, in cases of libel, no proof shall be admitted if the alleged punishable act has been dismissed (final acquittal), or there is procedural discontinuance, providing these rulings are not the result of statutes of limitation.

**Art. 318:** Provides that no punishment shall apply if the author of slanderous or libelous accusations retracts them before sentence is pronounced in the first or only instance, as long as the offended party approves and the retraction is made in the same information medium and in the same way as the original accusations.

Making accusations against individuals that dishonor them. Penalty is imprisonment from one to three years.



## MEXICO

Population: 104.2 Million

Press Freedom Rating: Partly Free

Freedom of expression moved forward on paper, with decriminalization of press offenses on the federal level.

### Developments

→ President Calderón signed a law on April 12, 2007 (passed by the federal Parliament) decriminalizing defamation and insult and obliging state governments to fall in line. Only three states had already done so – Baja California, Jalisco and the Federal District. In Chiapas, defamation is still punishable by up to nine years in prison and a fine equivalent to nine times the minimum wage.

In unanimously approving decriminalization of defamation and insult, the federal Senate said it is now for “civil court judges to decide if persons, journalists and communicators act within or outside the law when they disseminate information or opinions, by eliminating the possibility of a prison sentence for any abuse of freedom of expression.” These will henceforth be punishable by fines or the award of damages. “Under no circumstances” are the negative opinions of literary, artistic, historical, scientific or professional critics to be considered “attacks on the honor” of a person or institution.

### Relevant Laws

**The 1931 Penal Code for the Federal District** and subsequent amendments define the following unlawful acts regarding the press:

**Art. 350:** The crime of defamation shall be punishable with up to two years’ imprisonment or a fine of 50 to 300 Pesos (approx. US \$3.25-\$22.50), or both at the discretion of the judge.

Defamation consists of: deceitfully communicating to one or more persons the imputation made of another person or entity in those cases provided for under the law of an established or undetermined true or false fact that is liable to cause that person dishonor, discredit or harm or expose him to contempt.

A person accused of defamation is permitted the defense of *exceptio veritatis* (truth) under terms of Art. 351, only in the following cases:

I. When the alleged defamation is of a depository or agent of authority, or any other person performing duties of a public nature, if the imputation concerns the carrying out of those duties and

II. When the imputed fact is declared to be true by irrevocable ruling and the accused has acted out of public interest or legitimate private interest and without malicious intent.



There is no penalty when what are involved are technical opinions on some literary, artistic, scientific or industrial production or on the abilities, education, competency or conduct of another, if it is proven that he acted in carrying out a duty or in the public interest, or with the due reserve he did it for humanity, to provide a service to a relative or a friend, providing a report he had been asked for, so long as it is not done knowing it to be defamatory.

Also exempted is the author of a written deposition or declaration made in court, as if it contains any defamatory or slanderous utterance, the judge may impose the relevant sanction under the law.

**Art. 355:** It shall be no excuse for defamation or calumny that what is imputed is well known or that the defendant has merely reproduced what has been published in the Republic or abroad.

**Art. 357:** Although the innocence of the person defamed is clear or the facts presented in support of the formal complaint or charge are false, the person concerned shall not be liable to punishment if it is fully proven that he had good reason to err.

**Art. 360:** Legal action may not be taken against the author of a slander, defamation or libel other than by the offended person, except if the offended person has died and the slander or defamation come after his death, only the widow, heirs, descendants and siblings may proceed with the case; or, when the offense precedes the death of the offended person, and he had allowed the offense to occur, knowing about it and not having initiated proceedings while alive; and when the offense is against the Mexican nation or a foreign nation or government, or against their diplomatic agents in this country.

**Art. 361:** Slander, defamation and libel of Congress, either of the legislative chambers, the courts or any other official corporate body or institution shall be punishable under terms of the provisions set out herein, without prejudice to those in Article 190 of this Code.

**Art. 363:** Whenever a person is found guilty of slander, defamation or libel, if the offended person so requests the sentence shall be published in three newspapers at the cost of the former. When the offense is committed in a newspaper, its owners, managers or directors, whether or not they have criminal responsibility, shall be required to publish the ruling, being subject to a fine of 100 Pesos (approx. US \$7.50) per day if they fail to do so following the day of notification of sentencing. The amount of the fine may not exceed 10,000 Pesos (approx. US \$750).

**Other offenses implying restrictions on news content:**

**Art. 191:** Anyone insulting the national coat of arms or flag by word or deed shall be subject to six months to four years imprisonment or a fine of 50 to 3,000 Pesos (approx. US \$3.25-\$225), or both at the discretion of the judge.

### **The Press Law of 1917**

**Art. 29:** Criminal responsibility for written matter, books, engravings and other objects bought into the Republic in which there are invasion of privacy or offenses against morality or public peace shall fall directly on those persons who import, reproduce or expose them, or failing that, on those who sell or circulate them, unless the latter give evidence as to whom they delivered them for this purpose.

**Art. 31:** Invasion of privacy shall be punishable with six months detention to two years imprisonment and a fine of 100 to 1,000 Pesos (approx. US \$7.50-\$75) when the offense is liable to cause affront to public opinion or consist of an imputation or appraisal that may cause considerable harm to the honor, reputation or credit of the injured party, or seriously compromise his life, liberty and rights or interests or expose him to hatred or public contempt.

**Art. 33:** Offenses against public order or peace shall be punishable with from three months to two years imprisonment in the case of slander of the Congress of the Union or either of its legislative chambers, the Supreme Court of Justice of the Nation, the Army, Navy or National Guard, or their dependencies;

With six to 18 months imprisonment and a fine of 100 to 1,000 pesos (approx. US \$7.50-\$75) for slandering the President of the Republic in the carrying out of his duties or by reason of them;

With three to 18 months imprisonment and a fine of 50 to 500 Pesos (approx. US \$3.25-\$19.25) for slandering Cabinet Members, the Attorney General of the Republic or heads of federal government departments, and the Governors of the Federal and Territorial Districts by reason of their duties;

With one to six months imprisonment and a fine of 50 to 300 Pesos (approx. US \$3.25-\$19.50) for slandering a Supreme Court justice, a Federal or State Circuit or District Court judge, a lower court judge, whether in the Federal District or in the Territories or the States, an individual of the Federal Legislative Branch or of the state legislatures, or a General or a Colonel in the carrying out of their duties, or for slandering any other corporate public body If the slander is committed in a session of Congress, court proceedings, or to a General or Colonel in a military parade or in front of their troops, the penalty shall be two months to two years imprisonment and a fine of 200 to 2,000 Pesos (approx. US \$15-\$150);

With 15 days to three months imprisonment and a fine of 25 to 200 Pesos (approx. US \$1.88-\$15) for slandering anyone in charge of a public force, any of its agents or any other person performing public duties not mentioned in the four preceding Paragraphs in the carrying out of their duties or by reason of them;

With one to 11 months imprisonment and a fine of 50 to 500 Pesos (approx. US \$3.25-\$37.50) in the case of slandering friendly nations or their heads of state or representatives

accredited in the country other than those mentioned in the previous paragraphs, either Federal or State;

If the slander is committed in a session of Congress, court proceedings, or to a General or Colonel in a military parade or in front of their troops, the penalty shall be two months to two years imprisonment and a fine of 200 to 2,000 Pesos (approx. US \$15-\$150);

With 15 days to three months imprisonment and a fine of 25 to 200 Pesos (approx. US \$1.88-\$15) for slandering anyone in charge of a public force, any of its agents or any other person performing public duties not mentioned in the four preceding paragraphs in the carrying out of their duties or by reason of them;

With one to 11 months imprisonment and a fine of 50 to 500 Pesos (approx. US \$3.25-\$37.50) in the case of slandering friendly nations or their heads of state or representatives accredited in the country.

## URUGUAY

Population: 3.3 Million

Press Freedom Rating: Free

### Developments

➔ In January 2009, the Uruguayan Senate unanimously approved a bill modifying several articles of the press law and the Penal Code. The changes include significant elements affecting defamation and the offense of “insult to authorities.” The bill was sent to the Chamber of Representatives for expected adoption.



The amended Press Law includes protections for those who disseminate information of public interest about authorities and public figures. It stipulates that those protections do not apply when “real malice” or intent to commit a wrong against an individual or the private life of an individual is proven.

The offense of “insult to authorities” will only be applied when 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.” Nobody, however, will be punished for voicing disagreement with the work or actions of an official or public figure.

### Relevant Laws

#### **Penal Code of 1933**

##### **Art. 333: Defamation**

He who ... attributes a certain fact to a person that, if true, could give rise to legal or disciplinary proceedings being taken against him or expose him to public hatred or contempt, shall receive punishment of four months to three years imprisonment.

##### **Art. 334: Slander**

He who, outside 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 receive punishment of three to 18 months imprisonment.

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

**Art. 336:** Those found guilty of the crimes of defamation and slander shall not have the right to use truth as a defense, nor even the notoriety of the facts attributed to the offended person, except in the following cases:

1. When the offended person is a public official and the facts or characteristics attributed to him refer to the carrying out of his duties and which are such that they could give rise to legal or disciplinary proceedings against him.
2. When legal action is being taken or has just started against the offended person.
3. When it is clear that the author of the alleged crime has acted in the public interest.
4. When the complainant formally petitions for the lawsuit to continue until the truth or falsity of the facts or characteristics imputed.

# Asia

**Afghanistan**  
**China**  
**India**  
**Indonesia**  
**Malaysia**  
**Mongolia**  
**Singapore**  
**Sri Lanka**  
**Thailand**

**CARICATURE**

**Scorn**

**Ridicule**

**Blasphemy**

**Contempt**

**SEDITIONOUS LIBEL**

**INSULT**

**Offense**

**Protect Honor and Dignity**

**Mockery**

**Irony**

**Disrespect**

**PARODY**

**SATIRE**

**outrage**

**Affront**

**Defamation of religion**

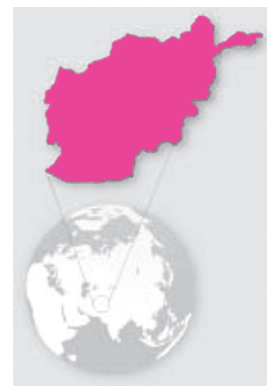
**LÈSE-MAJESTÉ**

## AFGHANISTAN

Population: 26.7 Million

Press Freedom Rating: Not Free

Afghanistan's media law prohibits publication of anything that harms the "national interest" or that is an "affront to Islam" – provisions often used to suppress expression. The head of state in December 2007 refused to sign a media law adopted by Parliament in May. Deputies, most of them former warlords, banded together to tighten media control out of "respect for Islamic values."



### Developments

➔ Sayed Parwiz Kambakhsh, then a 23-year-old journalism student and reporter for the newspaper *Jahan-e-Naw* ("The New World"), was arrested in October 2007 for distributing allegedly anti-Islamic literature. He gave friends an article saying the Prophet Mohammed ignored women's rights. He was also accused of possessing anti-Islamic books and starting un-Islamic debates in class.

He was sentenced to death Jan. 22 in a trial behind closed doors and without defense lawyers. But on Oct. 21, the head of a three-judge panel struck down the lower court's death penalty and sentenced him to 20 years in prison.

Kambakhsh claims he was tortured to sign a confession of apostasy (rejection of Islam). The key prosecution witness said in court that officials threatened to detain his family unless he testified against Kambakhsh. His brother, prominent journalist Sayed Yaqub Ibrahim, works for the Institute of War and Peace Reporting (IWPR) and has come under attack for reports criticizing local officials and warlords. The Committee to Protect Journalists, Reporters Without Borders, IWPR and Afghan sources said they feared the charges against Kambakhsh were meant to stop his brother's reporting.

➔ TV presenter Mohammed Naseer Fayyaz, host of the program *Haqeeqat* (The Truth) on privately owned Ariana TV was arrested July 28 after criticizing the government on air the day before. He called Trade Minister Mohammad Amin Farhang and Energy Minister Mohammad Ismail Khan thieves. Police officers rushed to the TV station to halt the program halfway through. Fayyaz had previously been threatened by parliamentarians, including former warlord Abdul Rasul Sayyaf. Fayyaz was charged with insulting the ministers and President Hamid Karzai. On July 30, he was released.

### Relevant Laws

#### **Afghan Constitution of 2004**

**Art. 34:** Freedom of expression shall be inviolable. Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means in accordance with provisions of this Constitution. Every Afghan shall have the right,



according to provisions of law, to print and publish on subjects without prior submission to state authorities. Directives related to the press, radio and television as well as publications and other mass media shall be regulated by law.

### **Mass Media Law of 2006**

#### **Art. 4: Freedom of Thought and Expression**

Every person has the right to freedom of thought and speech, which includes the right to seek, obtain and disseminate information and views within the limit of law without any interference or restriction by government officials. The right also includes free activity of the means of publication, distribution, and reception of information.

1. The government shall support, strengthen, and guarantee freedom of mass media. Except as authorized under this law, no real or incorporeal person, including government and government offices, may ban, prohibit, censor or limit the informational activities of mass media or otherwise interfere in their affairs.

#### **Art. 5: Seeking Information**

Every person has the right to seek and receive information. The government shall provide the information sought by citizens, unless the information sought is confidential and its disclosure endangers the security, national interests and territorial integrity of the country or damages the rights of other people.

#### **Art. 6: Legal Protection**

Journalists shall enjoy legal protection in carrying out their professional activities, including publishing reports and critical views. Journalists shall have the right to avoid disclosing their source of information, unless a competent court orders the disclosure.

#### **Art. 33: Penal Provisions – Publication of Prohibited Materials**

Publication of the following materials in mass media shall be prohibited:

- a. Materials that are contrary to the principles of the Holy Religion of Islam or are offensive to other religions or sects;
- b. Materials that are libelous and calumnious to persons;
- c. Materials advocating violence, war, or other issues contrary to the provisions of the Constitution, or termed as an offense in the Penal Code.
- d. Materials disclosing the identity and pictures of victims of violence and rape in a manner that damage their social dignity.

#### **Art. 35: Fines**

If a real or incorporeal person establishes a mass media, printing house, publishing institution, journalism training institute, translation center, or advertising company in the territory of Afghanistan in violation of the provisions of this law, he shall be sentenced to a fine as set forth hereunder and shall register the same within two weeks. Fines from 10,000 to 100,000 Afghani (approx. US \$200-\$2,000).

## CHINA

Population: 1.3 Billion

Press Freedom Rating: Not Free



To win the right to host the 2008 Summer Olympic Games, China pledged in 2001 to respect human rights. However, China simply found symbolic ways to implement its promised respect for press freedom and other basic rights. Repression remained the reality. China's Constitution grants citizens the right to criticize the government, but respect for individual rights is often ignored in practice. Sarah Cook, Asia Researcher at Freedom House, notes that criminal defamation in China seems to receive little attention, partly because it is primarily invoked against little-known whistle blowers exposing corruption in remote provinces, while internationally known dissidents are likely to face different charges, such as "inciting subversion" against the central authorities.

### Developments

➔ In a 60-page, detailed analysis of 223 defamation cases over a decade, Prof. Benjamin Liebman, head of Columbia University Law School's Center for China Legal Studies, concluded that there has been a complex growth of countervailing developments. Liebman found that, with the advent of a commercially autonomous press 15 years before the period of his study, there had been a dramatic increase in the number of defamation lawsuits. In the Winter 2006 issue of the Harvard International Law Journal, Liebman argued that the cases "exemplify two different tracks of defamation litigation in present-day China." – those "brought by local public officials, government and Communist Party entities, or corporations to punish and control the increasingly aggressive Chinese media" and, on the contrary, a second track of "persons without power or Party-state ties [who] sue the media, which, despite widespread commercialization, virtually all continue to be linked to the Chinese Party-state."

"The conventional wisdom, taking track-one powerful plaintiff suits as the paradigm, perceives defamation litigation in local Chinese courts as yet another lever of state control over the increasingly autonomous Chinese media. ... By neglecting track-two cases, however, this popular view shortchanges the extent to which defamation litigation in China also serves a countervailing function: the use of courts by ordinary persons to challenge state authority. The conventional wisdom also overlooks the degree to which defamation litigation reflects growing use of the formal legal system by local authorities to resist central Party-state control. ...

"[D]efamation litigation in China cannot be understood solely in terms of attempts to restrict media freedom or in terms of the power and influence of the media when compared to ordinary persons. Defamation litigation, like the legal system more generally, is developing on twin tracks, in which the media face new restraints and in which individuals are increasingly able to pursue their grievances through law. ... [That] plaintiffs are challenging -- and sometimes winning against -- influential Party mouthpieces shows that defamation litigation is a tool for challenging authority, not

merely a tool for restricting the newly commercialized Chinese media.

“[D]efamation litigation in China cannot be explained simply as an attempt by an authoritarian regime to restrict press freedom. ... The central Chinese Party-state does not use defamation litigation to constrain the media; it has other mechanisms for doing so, including a strict licensing system that limits new media entrants and a system of severe sanctions for publications and journalists who overstep the bounds of permissible content. The dearth of reports critical of high-ranking officials and government entities does not stem from the threat of defamation litigation. Instead, it reflects a system in which editors, journalists, and media outlets risk closure or jail if they engage in such reporting. ...

“[D]efamation litigation, originally designed to protect individuals, has been co-opted by those with power into a tool for resisting media scrutiny. Yet such use of defamation litigation may also serve to encourage greater use of litigation by ordinary individuals. ... [T]hese developments highlight the degree to which China’s legalization process is occurring in ways that are difficult for the central Party-state to control and that may not be easily perceived or categorized. The Chinese legal system is pulling in multiple directions, with courts and the media attempting to carve out significant autonomy within a framework of state oversight and interference. ...

“[A]lthough courts in many cases may have little choice but to rule for local powerful interests, they often issue only modest damages. ... Defamation litigation is a mechanism for constraining China’s media. High defeat rates in defamation cases suggest a threat to the media’s expanded autonomy. The empirical analysis ..., however, demonstrates that understanding the development of defamation law only in those terms would be a mistake. The significance of defamation litigation in China transcends individual cases, just as it goes beyond questions of whether defamation law is being used to constrict speech. The impact for understanding the legalization of Chinese society runs deeper. The combination of defamation law and rapidly evolving media and legal institutions is fostering litigation; it is also fostering expectations.”

➔ A Beijing court sentenced human rights activist Hu Jia April 3, 2008 to three and a half years jail and one year’s denial of political rights for “inciting subversion of state power.” Hu was arrested Dec. 27, 2007 for articles criticizing China’s democracy and human rights record, from August 2006 to October 2007 on Boxun, a banned, US-based Chinese-language web site. The court said Hu defamed the State and the Communist system. Beijing Municipal Detention Center officials denied his right of appeal.

➔ Wu Baoquan, a 39-year-old nutritionist, posted information on the Internet accusing officials in Ordos in Inner Mongolia of forcing residents off their land and selling the land to developers for outrageous profits. Police detained Wu for 10 days in 2007, and when Wu continued posting and then spoke to a journalist investigating the land deals, he was rearrested and charged with defamation, the *Far East Economic Review* reported.

In October 2008, a court found Wu guilty of “distorting facts and posting comments online that hurled abuse and defamed others and the government” and sentenced him to a year in prison. Wu appealed, and a new trial was ordered over the original court’s findings of fact. In February 2009, after a new hearing in which the prosecution introduced no additional evidence, Wu was released on bail. Finally, the court handed down a new conviction, doubling the jail sentence, to two years. Public outcry over the apparent stretching of the law to include charges of defaming the government and of his apparent punishment for using his right of appeal forced a new review in April 2009.

➔ On Aug. 16, 2007, a court in the southeastern province of Zhejiang imposed a four-year prison sentence on cyber-dissident Chen Shuqing for insulting the government. He was convicted for publication of seven articles on overseas web sites *Boxun*, *Dajiyan* (Epoch Times), *Zhongguo Shiwu Luntan* (China Affairs Forum), *Yi Bao* (China E Weekly) and *Duowei Xinwen* (Duowei News).

### **Relevant Laws**

#### **Penal Code (1997)**

**Art. 246:** Anyone who, by violence or other methods, publicly insults a person or fabricates facts to defame a person, and the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

The crime mentioned in the preceding paragraph shall be dealt with only upon complaint, except where serious harm has been done to the public order and to State interests.

**Art. 250:** A publication which contains contents that discriminate against or insult any minorities, and odious circumstances and serious consequences are involved, the responsible person who is directly in charge of such a publication shall be sentenced to fixed term imprisonment of not more than three years, criminal detention or public surveillance.

## INDIA

Population: 1.1 Billion

Press Freedom Rating: Partly Free

India's media are the freest in South Asia, although journalists face constraints. The Constitution provides for freedom of speech. Despite some legal limitations, these rights are generally upheld.



### Developments

→ In September 2007, an Indian High Court sentenced four journalists to jail for printing articles and a cartoon critical of the judiciary in the *Mid-Day* newspaper. It ruled that the articles and a satirical cartoon, which said a former chief justice abused his power to benefit his sons, harmed the Court's reputation. Two editors, Vitusha Oberoi and M.K. Tayal, publisher S.K. Akhtar, and cartoonist Irfaan Khan, were sentenced to four months in jail. They were freed on appeal.

### Relevant Laws

#### **Penal Code**

**Art. 124A:** 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.

*Explanation 1* – The expression ‘disaffection’ includes disloyalty and all feelings of enmity. *Explanation 2* – Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offense under this section. *Explanation 3* – Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offense under this section.

India's Supreme Court has upheld the constitutionality of this article, while interpreting it narrowly. The Court has said personal criticism of members of Government or those in power is not an offense under this article because “Government established by law” does not refer to persons temporarily carrying out its administration but rather to the authority of the established Government itself. The Court has also ruled it is not an offense merely to cause ill-feelings toward Government. Instead, sedition consists of communication that does, is intended to or has a tendency to create public disorder or incite violence.

**Art. 295A:** 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. 499:** 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.

*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.

The law lists ten exceptions, including: It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further. ... It is not defamation to express in good faith any opinion respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further. ... It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good. The law accepts truth as a defense: if it be for the public good that the imputation should be made or published; substantially true reports of court proceedings; good faith comments on the merits of any case, civil or criminal; and opinions on public performances.

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

**Art. 501:** 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:** 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.

## INDONESIA

Population: 223 Million

Press Freedom Rating: Partly Free

In July 2007, the Constitutional Court declared unconstitutional Arts. 154 and 155 criminalizing “public expression of feelings of hostility, hatred or contempt toward the government.” This followed a 2006 ruling that decriminalized insults against the President and Vice President. But defamation remains a criminal offense.



### Developments

→ March 2008: Spreading defamatory information may be punished by up to six years in jail and a fine of 1 billion Rupiahs (approx. US \$1 million) under a new Internet law. The Electronic Information and Transaction Law to combat online crime, pornography, gambling, blackmail, lies, threats and racism also prohibits citizens from distributing any defamatory or insulting materials electronically. Even a link to a web site containing defamation is punishable.

The Press Council said April 7 that the law recalls Dutch colonial law penalizing insulting rulers. The Council said such provisos should have been dropped after landmark Constitutional Court rulings. In December 2006 and July 2007, the Court ruled as unconstitutional articles criminalizing insults to the President, Vice President and government.

→ On Nov. 10, 2007, free speech advocate Upi Asmaradana, who coordinates the Coalition for Journalists against Criminalization of the Press, was charged with libel and defamation. Charges were brought by Inspector General Sisno Adiwino, who alleged that Upi “provoked journalists to resist the head of the South Sulawesi Regional Police Office.” The inspector reportedly told the public that, if they take umbrage at media content, they should sue the journalists rather than follow procedures in the Press Law.

→ In September 2007, in a defamation decision criticized by press freedom groups, the Supreme Court overturned two lower court rulings and ordered *Time* magazine to pay former President Suharto 1 trillion Rupiahs (approx. US \$100 million) in damages over a 1999 story accusing him and his family of embezzling \$15 billion. A Court spokesman said it concluded the story had damaged the former dictator’s “reputation and honor.”

→ Bersihar Lubis, a columnist for *Koran Tempo*, was on trial starting Sept. 19, 2007 for allegedly insulting the Attorney General’s Office (AGO). In a March 27, 2007 article, titled “The Story of a Dumb Interrogator,” Bersihar criticized the AGO’s ban of a high school history textbook. Bersihar was tried at the Depok District Court in West Java. He faced a maximum jail terms of 18 months and 16 months on two charges.

Bersihar quoted the word “dumb,” uttered by publisher Joesoef Isak in Paris in October 2004. Challenged to state which passages contained allegedly Marxist doctrines, the AGO could not do so. This led Joesoef to term the AGO’s allegations “dumb.”

➔ In June 2007, *Radar Yogya* general manager Risang Bima Wijaya was released after six months in prison in Sleman. He had lost a defamation case by Sumadi M. Wonohito, general manager of another paper in Jogjakarta. Wijaya printed articles on a scandal at Wonohito’s newspaper, the *Kedaulatan Rakzat Daily*, involving a female employee who alleged sexual harassment by the general manager.

➔ In May 2007, the Legal Aid Center for the Press filed a petition for two columnists, Risang Bima Wijaya and Bersihar Lubis, both of whom previously served in prison for defaming the attorney general. The petition called for abolition of laws criminalizing defamation and insults. The Constitutional Court upheld the laws in August 2007. A panel of judges chaired by Judge Harjono, said the plaintiffs’ demand for judicial review of the Penal Code lacked legal basis.

*The Jakarta Post* quoted the judge: “One’s good name, dignity and reputation are protected by the law and considered the constitutional right of individual citizens. This is guaranteed not only by the Constitution, but also by international law.”

➔ On Feb. 17, 2007, reformist legislators warned that work on revision of Indonesia’s Penal Code showed there would be many restrictions. At a workshop on the revision, legislator Soeripto of the Prosperous Justice Party said: “The draft laws will restrict freedom of expression, such as the bills on state secrets, intelligence and national security.” The Legal Aid Institute for the Press said at least 60 new articles of the revised Code could stifle public liberties.

These include articles on agitation against the government, airing misleading reports and news, defamation of the government and state institutions, defamation of individual reputations and divulging state secrets. One analyst said the revised Code would provide for seven years imprisonment for revealing state secrets, without defining such secrets. A government-named team working on the Penal Code has introduced articles on insulting the President. “Every country has such articles,” team head Muladi was quoted saying.

The Code, from Dutch colonial times, was often invoked by former President Soeharto to silence critics during his 30-year rule. An article on agitation against the government provides two years in jail or a fine for anyone convicted of insulting the government in a way that incites public unrest.

## **Relevant Laws**

### **Indonesian Penal Code Chapter XVI, 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.

## MALAYSIA

Population: 26.1 Million

Press Rating: Not Free



### Developments

→ Raja Petra Raja Kamarudin, founding editor of the *Malaysia Today* online news blog, has been detained several times and forced to contend with a diverse array of charges.

In August 2008, defamation charges were filed against the blogger for three items posted that month in *Malaysia Today*. Raja Petra had accused the Deputy Prime Minister, the Defense Minister and the Defense Minister's wife in the killing of a Mongolian citizen. A Malaysian court also ordered Raja Petra to reveal his sources, as well as the identities of site visitors who had posted comments deemed inflammatory.

Raja Petra was detained on Sept. 12. Ten days later, he was ordered jailed for two years on charges of insulting Islam and publishing articles in *Malaysia Today* that allegedly "tarnished the country's leadership to the point of causing confusion among the people."

He was eventually released. Nov. 14, when courts ruled there were insufficient grounds for his continued detention. His pre-trial hearings on the three defamation charges began in December; each of the charges could carry a prison terms up to two years.

→ On Sept. 17, 2008, the Sedition Act was also used to imprison filmmaker-turned-blogger Syed Azidi Syed Abdul Aziz. He had used his blog to poke fun at Prime Minister Abdullah Ahmad Badawi by pasting his image into mock movie posters. He remained in pretrial detention.

### Relevant Laws

**The Sedition Act (1948):** Criminalizes any speech that has a "seditious tendency." Those found guilty may be jailed for up to three years or fined 5,000 Ringgit (approx. US \$1,400).

**The Defamation Act (1957)** has been used to sue almost every newspaper and television station between July 2000 and March 2001. Legal actions of up to 100 million Ringgit (approx. US \$27 million) have been filed against the press. In July 2000, a business tycoon won record-high damages of 7 million Ringgit (approx. US \$2 million).

## MONGOLIA

Population: 2.6 Million

Press Freedom Rating: Partly Free

Mongolia's strict defamation and secrecy laws make it risky for journalists to make even simple references to anything concerning state corruption, says Globe International, a Mongolian freedom of expression organization. Under current legislation, anyone accused of libel and defamation may be jailed for two to five years, in addition to fines and damages.



### Developments

➔ Chaos overtook Mongolia during the parliamentary elections in June 2008. A report by Globe International found that, “from a mass media perspective, the Parliamentary Election of 2008 was held under significantly altered conditions, as compared to previous Elections. Comparatively increased quantities of broadcasting, an established Public Radio and Broadcasting System, approved Principles of Mongolian Journalists, relatively inflexible restricted time on broadcast of advertisements that linked to the election, and, for the first time, approved principles for media employees on reporting the electoral events and an established Board of Mass Media meant that conditions for the 2008 election deviated substantially from previous years.”

However, when the Mongolian People's Revolutionary Party (MPRP) convened a press conference June 30 to announce that they had won with an absolute majority, the opposition parties challenged the results, alleging that the elections were rigged. An opposition demonstration on July 1 outside the MPRP offices quickly turned violent, and demonstrators vandalized the building before setting fire to it. Riots erupted, and at midnight the same day, President Nambaryn Enkhbayar declared a state of emergency for the following four days. A media blackout was instituted, and solely state television channels were allowed to broadcast. Several journalists questioned the legal basis for the media blackout during a state of emergency.

➔ Criminal charges were pressed against B. Tsognemekh, a reporter for the daily newspaper *Zuuni Medee*, on April 9, 2007 and B. Ganbold, the newspaper's editor-in-chief, on May 11, 2007 under a complaint by Member of Parliament Ch. Ulaan. B. Tsognemekh was charged under Penal Code Art. 110.1 (insult -- imprisonment for a term of up to three months) and Art. 111.2 (libel -- imprisonment for up to six months).

B. Tsognemekh's articles in the Sept. 22, 2006, Feb. 5, 2007 and March 5, 2007 issues of *Zuuni Medee* featured stories about Ch. Ulaan's alleged abuse of power and receipt of bribes. The articles' description of the MP as “shameless” was deemed an insult by a group of experts.

## **Relevant Laws**

### **The Constitution of Mongolia**

**Art. 16:** The citizens of Mongolia shall be guaranteed the privilege to enjoy the following rights and freedoms: Freedom of thought, opinion and expression, speech, press, peaceful assembly. The right to seek and receive information except that which the State and its bodies are legally bound to protect as secret, In order to protect human rights, dignity and reputation of persons and to ensure national defense security of the country and population and protecting public order.

(Although Art. 16.17 of the Constitution protects the right to seek and receive information, it also allows restrictions to these rights, including “to protect ... the dignity and reputation of persons.”)

### **The Civil Law of Mongolia**

#### **Art. 7: Protection of name, dignity and reputation**

1. If citizens or legal entities consider that their name, dignity or business reputation has been defamed, then they shall be entitled to contest that defamation and claim for the recovery of damage caused by that defamation.
2. If the person who disseminated the information referred to in Para. 1 of this article cannot prove its accuracy, then that person shall be liable to compensate for any damage caused.
3. A court shall determine the amount of damage caused by the defamation of name, dignity or business reputation as well as the means of its recovery in accordance with the rules and producers set out in this law.

#### **Art. 377: Grounds for liability for damage**

1. A person who causes damage to the life, health, dignity, reputation, good will or property of another is obliged to fully compensate for that damage.
2. If person causing damage proves that damage did not occur as result of his or her own fault, he or she shall not be liable for that damage, except as provided by law.
3. A person who causes damage to other persons as a result of the exercise of statutory powers shall be exempt from liability, except as specifically provided by law.
4. Damage caused by justifiable self-defense shall not be compensated for.
5. If the need for protection causes damage to others, a court may exonerate the person fully or partially from liability, taking into account the circumstances and the amount of damage which may have been caused.
6. Unless otherwise provided by law, damage caused to another by a lawful action shall be compensated for.
7. Only a court shall determine the amount of damage.

### **Media Freedom Law (1998)**

**Art. 1:** The purpose of this law is to guarantee freedom to freely express, freedom of speech and freedom to publish stated in the Constitution of Mongolia.

**Art. 2:** Prohibits adopting any laws restricting media freedom and freedom of media outlet.

**Art. 3:** Bans censorship and obliges the media outlet to take responsibility for its publications and programs.

**Art. 4:** Prohibits state ownership of mass media.

### **Criminal Law**

The Criminal Law passed in 2002 states that it is a crime to interrupt lawful professional activities: (**Art. 139:** “The person interrupted the lawful and professional activities of the journalist in order to disseminate or not to disseminate any information, which affects his or her own or other’s interest, shall be fined 31-50 times increased amount of the minimum wage, or shall be arrested for a period of one to three months.”)

Nonetheless, other articles seem to negate that guarantee:

### **Art. 231: “Insulting state officials and public inspectors for social order”**

A criminal charge of a fine for 5-50 times an increased amount of the minimum wage, or forced works for 100-150 hours, or arrest for a period of one to three months shall be imposed, if state officials and public inspectors for social order are insulted before the public in relation to their duties.

### **National Defamation Law,**

**Art. 111: Libel:** A criminal charge of a fine for 20-50 times an increased amount of the minimum wage or arrest for a period of one to three months shall be imposed, if a clear statement of libel is distributed with a purpose to defame a person’s honor and reputation. A criminal charge of a fine for 51-150 times of an increased amount of the minimum wage or arrest for a period of over three months or up to six months shall be imposed, if libel is distributed through media or if the crime of insult and libel is committed by a person who was criminally charged previously.

## SINGAPORE

Population: 4.5 Million

Press Freedom Rating: Not Free

Singapore has some of the world's most stringent press and media restrictions, and laws against such offenses as libel, defamation and sedition are often invoked to punish what officials deem insulting, without actually calling it insult.



### Developments

→ In September 2008, former Singaporean citizen and naturalized American, Gopalan Nair, was sentenced to three months imprisonment for insulting a high court judge on his blog. News reports that the court, in handing out the sentence, said that Gopalan had “scandalized the judiciary and the administration of justice in Singapore.”

### Relevant Laws

#### **(Proposed) New Section 108B**

**Art. 15:** The Penal Code is amended by inserting, immediately after section 108A, the following section: “Abetment outside Singapore of an offense in Singapore 108B. A person abets an offense within the meaning of the Code who abets an offense committed in Singapore notwithstanding that any or all the acts constituting the abetment were done outside Singapore.”

**Art. 36. Section 292** of the Penal Code is amended by extending provisions now covering distribution of material to include data transmission electronically.

#### **(Proposed) New Section 298A**

**Art. 39:** The Penal Code is amended by inserting, immediately after section 298, the following section: “Promoting enmity between different groups on ground of religion or races, and doing acts prejudicial to maintenance of harmony  
298A. Whoever ---

- a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between different religious or racial groups or communities; or
- b) commits any act which is prejudicial to the maintenance of harmony between different religious or racial groups or communities, and which disturbs or is likely to disturb the public tranquility, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

**Newspaper and Printing Presses Act:**

**Art. 23: Permit required for sale and distribution in Singapore of offshore newspapers**

- 1) No person shall sell or distribute, or import for or possess for sale or distribution any offshore newspaper in Singapore unless there is in force a permit granted by the Minister to the proprietor of the newspaper or his agent authorizing the sale or distribution of that newspaper in Singapore.
- 2) The Minister may grant the permit subject to such conditions as he may impose or may refuse to grant or revoke the permit without assigning any reason.
- 3) Without prejudice to the generality of subsection (2), the Minister may in imposing conditions under that subsection —
  - a) specify that the maximum number of copies for each issue of the newspaper which may be sold or distributed in Singapore shall be determined from time to time by the Minister;
  - b) require the proprietor of the newspaper to appoint a person within Singapore authorized to accept service of any notice or legal process on his behalf and on behalf of the publisher and to furnish the Registrar with the name and address of the person so appointed; and
  - c) require the proprietor of the newspaper to furnish to the Registrar a deposit or some other form of security of such amount as the Minister may determine for the purpose of meeting any liability or costs arising out of any legal proceedings in connection with the publication of the newspaper.
- 4) Every such permit shall have effect only in respect of the proprietor to whom it was granted and shall unless sooner revoked ordinarily be for one year from the date of its issue, and may be renewed for further periods not exceeding 12 months in respect of each renewal.
- 5) Notice of the grant or revocation of a permit to sell or distribute an offshore newspaper shall be published in the *Gazette*.
- 6) In any proceedings under this Section, it shall be presumed, until the contrary is proved, that any person found in possession of more than five copies of the same issue of an offshore newspaper had possession of them for sale or distribution.
- 7) In this section —
  - a) “offshore newspaper” means a newspaper published outside Singapore at intervals not exceeding one week which contains news, intelligence, reports of occurrences, or any remarks, observations or comments, pertaining to the politics and current affairs of any country in South-East Asia, except where the circulation of every issue of the newspaper in Singapore is less than 300 copies;
  - b) for the purposes of Paragraph (a), a newspaper is published outside Singapore if, and only if, its contents and editorial policy are determined outside Singapore.
- 8) This section shall not apply to any newspaper in respect of which there is in force a permit granted under Section 22 or to any copy of a newspaper reproduced with the approval of the Minister under Section 25.

**Art. 4: Declared foreign newspapers**

(1) The Minister may, by order published in the *Gazette*, declare any newspaper published outside Singapore to be a newspaper engaging in the domestic politics of Singapore.

(2) No person shall, without the prior approval of the Minister, sell or distribute or import or possess for sale or distribution any declared foreign newspaper.

(3) The Minister may grant his approval under subsection (2) subject to such conditions as he may impose or may refuse to grant or revoke such approval without assigning any reason.

(4) The Minister may restrict the sale or distribution of each issue of any declared foreign newspaper granted approval under subsection (2) to such number of copies as he thinks fit, and may require such copies to be marked in such manner as he may direct.

(5) Any person who contravenes subsection (2) or fails to comply with any of the conditions imposed under subsection (3) or who sells or distributes any copy of a declared foreign newspaper which is not marked in accordance with subsection (4) shall be guilty of an offense and shall be liable on conviction to a fine not exceeding [Singapore] \$50,000 (approx. US \$35,000) or to imprisonment for a term not exceeding two years or to both.

(6) In any proceedings under this Section, it shall be presumed, until the contrary is proved, that any person found in possession of more than five copies of the same issue of a declared foreign newspaper had possession of them for sale or distribution.



## SRI LANKA

Population: 19.9 Million

Press Freedom Rating: Not Free

Official rhetoric has become more unfriendly toward journalists and media outlets perceived to be “unpatriotic” or critical, with officials regularly equating any form of criticism with treason. The government’s attitude was indicated by an attempt in June 2008 – introduced by the Justice Minister and supported by the President but opposed by other cabinet members and later quietly withdrawn – to reinstate a criminal defamation law repealed in 2002 and that included prison terms for those convicted.



### Developments

→ In September 2008, journalist J.S. Tissainayagam was formally charged under the Prevention of Terrorism Act in Sri Lanka. While the wording and charges under the formal indictment were unclear, it appeared that Tissa was charged for publishing and distributing a magazine, *Northeastern Monthly*, alleged to have “brought the government into disrepute.” The charges were related to articles Tissa wrote and edited in 2006.

In November, Tissainayagam was moved without explanation to the Magazine prison in Colombo. While awaiting trial, he was said to have made a confession under duress.

→ On Oct. 8, 2007, while urging the media to refrain from publishing any reports that would undermine the efforts of the armed forces, the Director General of the Media Centre for National Security (MCNS), Lakshman Hulugalle, told the media that, “We consider anyone who criticizes the defense forces to be a traitor to the nation as such people undermine the lives of armed forces personnel.”

### Relevant Laws

#### **Penal Code**

**Art. 118:** Whoever, by means of any contumacious, insulting or disparaging words, whether spoken or intended to be read, or by signs or visible representations, shall attempt to bring the President into contempt, shall be punished with simple imprisonment for a period which may extend to two years, and shall also be liable to fine.

**Art. 120:** Whoever by words, either spoken or intended to be read, or by signs or visible representations, or otherwise, excites or attempts to excite feelings of disaffection against the President or the Government of the Republic, or excites or attempts to excite hatred or contempt of the administration of justice, or excites or attempts to excite the people of Sri Lanka to procure, otherwise than by lawful means, the alteration of any matter by law established, or attempts to raise discontent or disaffection amongst the people of Sri Lanka, or to promote feelings of ill-will and hostility between different classes of such

people, shall be punished with simple imprisonment for a term which may extend to two years.

*Explanation:* It is not an offense under this section by intending to show that the President or the Government of the Republic has been misled or mistaken in measures, or to point out errors or defects in the Government or any part of it, or in the administration of justice, with a view to the reformation of such alleged errors or defects, or to excite the people of Sri Lanka to attempt to procure by lawful means the alteration of any matter by law established, or to point out in order to procure their removal matters which are producing or have a tendency to produce feelings of hatred or ill-will between different classes of the people of Sri Lanka.

**Art. 291B:** Whoever, with the deliberate and malicious intention of outraging the religious feelings of any class of persons, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In September 1997, the Government rescinded the Parliamentary Powers and Privileges Act, which had provided for unlimited fines or up to two years imprisonment for anyone who criticized a Member of Parliament.

## THAILAND

Population: 63.4 Million

Press Freedom Rating: Partly Free

While free in many respects, Thai media refrain from comment on the monarchy, lest they violate the vaguely defined “*lèse majesté*” law, which allows any citizen to file complaints against anyone considered to have insulted the monarchy.



### Developments

➔ There was a mix of positive and negative legislative changes in 2007. The October 2006 interim Constitution, which failed to protect freedom of expression explicitly, was replaced by a new Constitution in October 2007. It restores and even extends the 1997 Constitution’s freedom of expression guarantees.

In late August, the National Legislative Assembly also replaced the country’s 1941 Printing and Publishing Act, which had given the government the right to shut down media outlets, with the Publishing Registration Act. The new act contains fewer restrictions and lighter penalties for violations. Thailand’s Press Registration Act of 2006 no longer demands that newspaper editors and publishers automatically stand as defendants in defamation suits against their writers. Plaintiffs in defamation cases may now just sue the writer.

➔ Harry Nicolaides, an Australian writer jailed in Thailand for insulting the monarchy, was granted a royal pardon on Feb. 19, 2009 and returned home. Nicolaides had been sentenced to three years in jail on “*lèse majesté*” charges, for defaming the Crown Prince in three sentences of *Verisimilitude*, a largely unknown novel he wrote and published in 2005. Only seven of 50 copies printed were ever sold. He was held in Bangkok from Aug. 31, 2008. According to Nicolaides’s lawyer, Mark Dean, the writer’s release resulted from close cooperation between the Thai and Australian governments.

➔ Police Lt. Col. Wattanasak Mungkandee filed a third criminal complaint against BBC correspondent Jonathan Head on Dec. 23, 2008, alleging he had insulted the Thai monarchy in his reporting.

The latest charges were related to a Dec. 3 article in which Head speculated that the royal palace and figures close to the palace may have provided tacit backing to the anti-government protest group the People’s Alliance for Democracy (PAD), which laid siege to Bangkok’s main international and domestic airports from Nov. 26 to Dec. 3, 2008.

The first complaint was filed April 9 and was related to comments Head made in December while moderating an event at the Foreign Correspondents Club of Thailand. Titled “Coups, Capital and Crown,” the discussion touched on the monarchy’s role in Thai

society in light of the 2006 military coup. No charges were filed against the local and international academics on the panel.

The second complaint against Head was filed May 30 and included charges that his reporting over a two-year period had “intended to criticize the monarchy several times” and that “his writings have damaged and insulted the reputation of the monarchy.” The May 30 complaint cited 11 articles from the BBC’s web site, many of which Head did not write. He denied any of his reporting or comments had criticized the monarchy.

Wattanasak filed all three complaints against Head in his personal capacity rather than as a senior ranking police official, according to Head.

➔ The Thai distributor of *The Economist* banned the Dec. 6-10, 2008 issue of the magazine because it contained an article critical of the country’s monarch, news reports said. The Agence France-Presse (AFP) Bangkok bureau quoted bookseller and distributor Asia Books as saying it decided not to import the issue because the story on King Bhumibol Adulyadej’s alleged role in politics “risks insulting the monarchy.”

The article, also available online, questioned the alleged involvement of the monarchy in the country’s political affairs and its support for military interventions, the latest of which was the 2006 coup that ousted former prime minister Thaksin Shinawatra.

Thai police said the importer had agreed to a self-imposed ban on the story because of its critical stance on the monarchy. *The Economist* web site including the article was not blocked, according to Reuters.

➔ In September 2008, a Thai court issued orders to shut down 400 web sites, 344 of which carried material deemed disrespectful to the royal family. Thailand’s Information and Communications Technology (ICT) Ministry requested police assistance to bring all the alleged violators to trial.

Since then, Thai authorities have blocked 2,300 web sites for allegedly insulting the monarchy, with 400 more awaiting a court order to restrict them.

*The Economic Times* quoted ICT Minister Ranongruk Suwanchawee on Jan. 6, 2009 saying that “The blocking of web sites that disseminate content and pictures which insult the monarchy is one of the government’s crucial policies. We have blocked more than 2,300 web sites. We are preparing to ask for court approval to shut down an additional 400 sites and will amend the . . . law to increase powers of ICT officials as soon as Parliament reopens.”

Ranongruk said the ministry had spent 45 million Thai Bahts (approx. US \$1.3 million) to buy equipment for a round-the-clock “war room” targeting inappropriate web sites.

➔ In August 2008, a blogger, Praya Pichai, spent two weeks in custody under the law against cyber-criminality for defamation, harming national security, and criticizing the

monarchy in an article posted on his blog (prachathai.com). The authorities lifted the charges against him for lack of evidence, but he was to be kept under surveillance for ten years and faces prison if he posts any new political comment on a web site.

➔ In August 2007, news reports in Thailand and the international press said that Google-owned YouTube agreed to cooperate with Thai authorities in filtering sensitive content on its web site, paving the way to lift a ban on the video-sharing web site.

Thai information officials were assured by Google that filtering programs were put in place to keep content deemed insulting to the Thai monarchy from being accessed inside the country. As of Aug. 31, 2007, YouTube was accessible in Bangkok, five months after the Thai government blocked local access to the site because of the videos deemed to have insulted the king. Thailand's minister for information and communication technology said that the ban was lifted "after YouTube managed to find filter technology to screen out clips we do not want."

➔ A new Computer Crime Act was passed in May 2007 and came into effect in July threatening stiff penalties, including prison terms of up to five years, for publication of forged or false content considered to endanger individuals, the public, or "national security," as well as the use of proxy servers to access government-restricted material. The new legislation was first invoked to bring charges against a blogger and a web master in late August. Those charges were dropped in October without explanation, but watchdog groups expressed fear that the new law would have a chilling effect on online media, the country's strongest outlet for free discussion.

➔ In April 2007, a Bangkok court sentenced two talk show hosts to two years in prison for insulting deputy Bangkok governor, Samart Ratchapolasit, by saying he had twice accepted bribes.

➔ Oliver Rudolf Jufer, a resident of the northern city of Chiang Mai, was arrested and detained after he smeared five posters of King Bhumibol Adulyadej with black paint on Dec. 5, 2006. Millions of portraits of the aged king had been posted for his 79<sup>th</sup> birthday. Charged with insulting the king and defacing public property, Jufer, who had been imprisoned since his arrest, pleaded guilty in a Chiang Mai court on March 12, 2007.

## **Relevant Laws**

### **Constitution**

**Section 37:** A person shall enjoy the liberty of communication by lawful means. The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals.

**Section 39:** A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicize, and make expression by other means.

The restriction on liberty under Paragraph 1 shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.

The closure of a press house or a radio or television station in deprivation of the liberty under this section shall not be made.

The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict; provided that it must be made by virtue of the law enacted under the provisions of Paragraph 2.

#### **Chapt. II, 6:**

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.

#### **Penal Code**

**Art. 118:** Whoever does any act to the flag or any other emblem symbolizing the State with the intent to deride the nation shall be punished with imprisonment not exceeding one year or a fine

**Art. 133:** Whoever defames, insults or threatens the Sovereign, his Queen or her Consort, Heir-apparent or Head of a foreign State shall be punished with imprisonment not exceeding three years or a fine or both.

**Art. 134:** Whoever defames, insults or threatens a foreign representative accredited to the Royal Court shall be punished with imprisonment not exceeding two years or a fine, or both.

**Art. 135:** Whoever does any act to the flag or other emblem symbolizing a friendly foreign State with intent to deride such State shall be punished with imprisonment not exceeding one year or a fine or both.

**Art. 135:** 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 six months or a fine or both.

**Art. 326:** Whoever imputes anything before a third person in a manner likely to impair the reputation of any other person or to expose such person to hatred or contempt is said to commit defamation and shall be punished with imprisonment not exceeding six months or a fine or both.

**Art. 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 326.

**Art. 328:** If the offense of defamation be committed by means of publication or 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 one year or a fine or both.

**Art. 329:** Whoever, in good faith, expresses any opinion or statement 1) by way of self-justification or defense, or for the protection of any 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.

**Art. 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.





# Middle East/North Africa

Algeria  
Bahrain  
Egypt  
Iran  
Iraq  
Jordan  
Kuwait  
Lebanon  
Morocco  
Saudi Arabia  
Syria  
Tunisia  
Yemen

CARICATURE  
Sarcasm  
Ridicule  
Blasphemy  
Contempt  
Abuse  
SEDITIONOUS LIBEL  
INSULT  
Protect Honor and Dignity  
Mockery  
Irony  
Disrespect  
PARODY  
SATIRE  
outrage  
Affront  
Defamation of religion  
LÈSE-MAJESTÉ

## ALGERIA

Population: 33.4 Million

Press Freedom Rating: Not Free



While the Constitution guarantees freedom of expression, the government used legal and illegal means to harass and restrict the media. A state of emergency declared in 1992 remained in effect, authorizing the government to penalize legally any speech deemed threatening to public order. In addition, a February 2006 presidential decree provides up to five years imprisonment for

any criticism of the conduct of security forces during Algeria's civil conflict of the 1990s. The 1990 Communication Law was amended in 2001 to criminalize defamation of the President, Parliament, judiciary or the military. The Penal Code imposes penalties from fines to prison terms of up to two years for defamation of high government officials.

Government actions over the Internet are rare, but online news is not a major information source for most Algerians. In 2008, 7.4 per cent of Algeria's population accessed the Internet. The government monitors e-mail and Internet chat rooms. Internet service providers are legally liable for content, and bloggers liable to defamation charges.

### Developments

➔ In the latest defamation case against renowned Algerian cartoonist Ali Dilem by the Defense Ministry, the State Prosecutor requested a two-month jail term for the cartoonist, and also the publisher and managing editor of his daily newspaper *Liberté*, Ali Ouafak and Farid Alilat. The cartoon that triggered the charges, published in July 2004, showed Lt. Gen. Mohamed Lamari as he retired as Algerian army Chief of Staff.

It was the third trial against Dilem in 2008 alone. He got a six-month suspended sentence in one instance, and the second case was on appeal. Since starting his career 19 years earlier, Dilem was indicted more than 50 times, mainly by the Presidency and the military.

➔ Omar Belhouchet, director of the French-language daily newspaper *El Watan*, and Chawki Amari, an *El Watan* columnist, were sentenced to two months in jail and fined 1 million Dinars (approx. US \$14,000) for insulting the Wali of Jijel (the district governor) in June 2006. The appeals court upheld the convictions in March 2008.

➔ A court fined university student Moncef Fellahi Dec. 22, 2007 for displaying a sign hostile to President Nicolas Sarkozy during the French leader's visit to Constantine on Dec. 5. Fellahi was fined 50,000 Dinars (approx. US \$700) for "outrage." The court did not grant the prosecutor's call for a six-month jail term as well.

➔ On June 11, 2007, blog administrator Abdulsalam Baroudi was fined 10,000 Dinars (approx. US \$140) for charges by the Director of Religious Affairs for defamatory material on his blog in February.

## **Relevant Laws**

The 1990 Press Law specifies that freedom of speech must respect individual dignity and the imperatives of foreign policy and national defense.

In 1994, the government issued a decree that independent newspapers could only print security-related information based on official government bulletins.

In 2001, the Algerian government amended the Penal Code to increase penalties for verbal attacks on public officials.

The revision added severe sanctions for journalists and newspapers ranging from suspension of duties to fines, and 24-month prison terms for defamation or insult of government figures, civil servants, judges, and military officers. Journalists may be tried for offending the President (up to 12 months and a fine), Islam (up to five years and fine) and other religions (up to three years and fine). The press law also states that journalists may be imprisoned for up to ten years for endangering state security and national unity.

**Art. 144 b:** Any person who offends the President through 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 one to three years and fines of 100,000 to 1 million Dinars (approx. US \$1,400 to \$14,000) or one of these two sentences only.

**Art. 144 b.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 one to three years and a fine of 100,000 to 1 million Dinars or one of these two sentences only. The publication would incur a fine of 500,000 to 5 million Dinars (approx. US \$7,000 to \$70,000). In case of a further offense, prison sentences and fines are doubled.

**Art. 146:** These penalties in Arts. 144b and 144b.1 also apply in cases of offenses against the Parliament, the ANP (National Popular Army, *Armée nationale populaire*) and any other public institution or constituent body. In case of a further offense, prison sentences and fines are doubled.

**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 \$70 to \$700) or one of these two sentences only. Defamation with the intent to incite public intolerance directed toward an individual as a member of a racial 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 \$140-\$1,400) or one of these two sentences only.

## BAHRAIN

Population: 700,000

Press Freedom Rating: Not Free



Despite constitutional protections of freedom of expression and of the press, the government continued to enforce a 2002 press law restricting the rights of the media. Bahrain's press law provides up to five years' imprisonment for publishing material criticizing Islam or the king, inciting actions that undermine state security, or advocating change in the form of government.

On May 28, 2007, the upper house of the Parliament approved a revised press law to decriminalize press offenses, protect the confidentiality of sources, ensure access to official information, and end criminal responsibility of publishers. But the law was awaiting passage by the lower house, an elected body heavily influenced by conservative religious elements. It rejected a similar bill three years earlier.

### Developments

➔ The Higher Criminal Court fined Mohamed Al-Sa'ae, a journalist working in the *Akhbar Al-Khaleej* Arabic-language newspaper, 50 Dinars (approx. US \$133) for using the newspaper to discredit the integrity of the Undersecretary of the Ministry of Health. Al-Sa'ae wrote that the Undersecretary "lacks proper conduct and his morals are free of manhood and traits of freemen."

➔ On Oct. 21, 2007, the Higher Criminal Court convicted three Bahraini writers of insult and defamation, fined them 200 Dinars (approx. US \$530) and charged them 51 Dinars (approx. US \$135) in damages, plus court fees.

The writers were convicted of defaming the director of Dar Al-Manar Elderly Care Center and her husband, in an article published in the electronic journal *Al-Saheefa*. The three writers are Saleh Al-Amm, a journalist, writer and the editor of the journal; Muath Al-Meshari, a columnist for *Al-Wasat* newspaper; and Fareed Al-Shayeb, a writer for *Al-Saheefa*, an electronic news site banned in Bahrain.

➔ In October 2007, a journalist, Hesham Al-Zayani, and the editor-in-chief of the *Akhbar Al-Khaleej* newspaper were each fined 1,000 Dinars (approx. US \$2,650) by the Supreme Criminal Court of Appeal for an article that allegedly insulted the president of Arabian Gulf University. The charges against the journalists were announced on Oct. 28 and were based on Art. 47 of the 2002 press code.

## EGYPT

Population: 74 Million

Press Freedom Rating: Partly Free

Egypt's status improved from Not Free to Partly Free in recognition of the wider range of viewpoints represented in the Egyptian media. This progress occurred despite continuing official harassment, repression, and imprisonment of journalists.



### Developments

➔ On Jan. 31, 2009, four Egyptian newspaper editors convicted of publishing material that criticized President Hosni Mubarak and his top aides had their one-year jail sentences overturned by a Cairo appeals court, according to the Arabic Network for Human Rights Information (ANHRI) and the Committee to Protect Journalists (CPJ). The one-year jail terms were given in September 2007 to four editors: Ibrahim Issa of the daily *Al Dustour*, Adel Hammouda of the weekly *Al Fajr*, Wael al-Abrashi of *Sawt Al Umma*, and Abdel Halim Kandil, former editor of the weekly *Al Karama* for “publishing false information likely to disturb public order.” But the court upheld a 20,000 Egyptian Pound (approx. US \$3,500) fine against each one.

Nearly 90 cases for defamation have been filed against Kandil over the past five years, including some by politicians close to the President. Issa is also among the most judicially harassed journalists in the country. In September 2008, an appeals court sentenced him to six months in prison for spreading “false news” about President Mubarak’s health. The President granted him a pardon in October 2008.

➔ On Dec. 31, 2008, the Dokki Court of Misdemeanors announced that it would dismiss charges against two bloggers, Manal Bahi and Alaa Abdel Fatah. Judge Abdel Fatah Murad filed the libel and defamation case against the bloggers in April 2007. He had requested that the courts block 49 web sites that had published reports of the judge’s plagiarism. The courts rejected his request, and so he allegedly fabricated the defamation cases against bloggers who reported on his reported plagiarism.

Reacting to the news, Fatah said: “Despite our happiness with a verdict which restores the order of things, we are still worried about numerous other cases which target defenders of freedom of expression and the right to the free circulation of information. The enemies of freedom of expression are still chasing activists, bloggers and journalists and persecuting them in the courts in an effort to intimidate them.”

➔ On Oct. 11, 2008, a criminal defamation case against Adel Hammouda, editor-in-chief of *Al Fajr* weekly newspaper, and journalist Mohamed El Baz, was filed by the Grand Sheikh of Al-Azhar, the highest religious authority in Egypt. In 2007, the Sheikh of Al Azhar, Mohamed Sayed Tantawy, filed a case against Hammouda and El Baz, accusing them of “defamation and insult” of Al-Azhar University. The case started after a March

19, 2007 article in *Al Fajr* titled “The Grand Sheikh of the Vatican” that included doctored photos of the Sheikh of Al-Azhar in a uniform that he considered described as “contradicting his position,” and an “insult that damaged the prestige of the position.”

➔ On Dec. 10, 2007, six lawsuits for insult and defamation were brought before the Misdemeanors Court of El-Agouza against journalist Wael El Ibrashi, chief editor of the independent newspaper, *Sawt El-Omma*. The suits were filed by businessmen over articles on alleged legal transgressions by their companies. Three of the suits were filed by one person who is chairman of the board of one of the companies. Wael El Ibrashi is often sued over his paper’s frequent reports on corruption.

➔ In July 2007, Abdel Moati Hegazi, a prominent Egyptian poet, refused to pay a 20,000 Pound (approx US\$ 3,500) fine brought against him by an appeal court in Cairo after he was charged with insulting Yusuf al Badri, an extremist known for his enmity toward freedom of speech. The Southern Cairo court set Aug. 8, 2007 as the date for selling Hegazi’s home furniture to pay the fine, after Hegazi said he would rather see his furniture be sold than pay the fine. The insult charge filed by al Badri in 2003 is just one of a series of insult law suits he has brought against various writers, sometimes in the form of a “*hesba*” (insult to God) case.

➔ On March 12, 2007, the Alexandria Appeals Court confirmed a sentence of four years’ imprisonment for Egyptian blogger Abdel Kareem Suliman Amer for “insulting Islam and the president of Egypt.” Amer’s blogs regularly criticized alleged religious and authoritarian excesses of President Mubarak’s government, and Egypt’s highest religious institutions, including Al-Azhar University, where he studied law before being expelled.

### **Relevant Laws**

Even after the 2006 amendments to the press law, publication of “false news,” criticism of the President and foreign leaders, and publishing material that constitutes “an attack against the dignity and honor of individuals” or an “outrage of the reputation of families” remain criminal offenses often prosecuted by the authorities. Fines can range from 5,000 to 20,000 Pounds (approx. US \$900-\$3600) for press infractions and up to five years imprisonment for criticizing a foreign head of state or the President.

The Egyptian Constitution guarantees freedom of press in its 48th article. Censorship is forbidden, as is administrative suspension or closure of newspapers. In a state of emergency or time of war, limited censorship may be imposed on news media for public safety or national security reasons.

The 1996 press law prescribes prison sentences of up to two years for defamation. Journalists incur imprisonment under other Penal Code provisions, such as “violating public morality” and “damaging national interest.”

Art. 179 of Egypt’s Penal Code criminalizes “insulting the President,” and Art. 102 allows detention of “whoever 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.”

In February 2004, President Mubarak announced at the opening ceremony of a journalists’ conference that he would abolish the imprisonment in suits involving journalists and publications, covered under Law 96/1996, Arts. 22, 21, 20, and 28, in addition to the Penal Code’s Arts. 307, 306, 303, 302, and 171.

On July 10, 2006, Egypt’s National Assembly approved the last government amendments to Penal Code provisions on the press. This eliminated a provision providing prison terms but left in place criminal penalties for criticizing the President or foreign leaders.

Formerly, Art. 181 of the Penal Code called for detention of “whoever vilifies... the king or president of a foreign country,” but set no mandatory sentence. Under the amendments, the penalty is fixed at between six months and five years in prison, or a fine of 5,000 to 20,000 Pounds (approx. US \$870-\$3,480) for the editor and 10,000-30,000 Pounds (approx. US \$1,740-\$5,220) for the journalist. Embassies may file suit against Egyptian journalists by writing a letter to the Egyptian Ministry of Foreign Affairs, which may choose to aid them in bringing charges.

Art. 308 of the Penal Code, providing a minimum of six months in prison for journalists whose articles “comprise an attack against the dignity and honor of individuals, or an outrage of the reputation of families,” remains in force.

## IRAN

Population: 70 Million

Press Freedom Rating: Not Free

Censorship has become the standard method of managing Iran's press. Since taking power in 2005, President Mahmoud Ahmadinejad and his top aides have tried to eliminate press freedom by intimidating critical journalists into self-censorship. Journalists are subjected to constant judicial harassment.



Although the Constitution guarantees freedom of expression, it must follow Islamic principles. Press law amendments in 2000 further tighten restrictions. Since there are no clear definitions of the concepts of Islam or insult of top clerical officials or national security, journalists face arbitrary legal interpretations.

### Developments

➔ A number of opposition newspapers suspended since 2000 received “permanent closure” orders in 2007. *Golesan-e Iran (Garden of Iran)* was closed Sept. 15, 2007, after being suspended since 2004. The reformist daily was accused of publishing articles that were “lying and hostile to the Islamic regime” and “offending against decency.” Editor Frozan Assafi Nakhei received a two-year professional ban.

The conservative daily *Siassat Rouz (Politics Today)* was closed Feb. 3, 2007 by the Press Monitoring Commission, for an article called an “insult to Sunni Muslims.” Printed Feb. 1, it seemed to criticize the second Caliphate of Omar Ibn al-Khattab. *Siassat Rouz's* management had apologized the following day, blaming a typographical error.

➔ Novelist Yaghub Yadali was arrested March 15, 2007 and detained for 41 days for insult, libel and publication of false information in two fictional works: a collection of six short stories titled “Sketches in the Garden” (Aasa Publications, 1997) and a novel, “Rituals of Restlessness” (Niloufar publications, 2004). Both were approved by the Ministry of Guidance. Yadali was convicted and sentenced September 2007 to one year in prison for “insulting in order to agitate the general public.” Nine months of his term were suspended for two years, provided he wrote four articles for local newspapers, to be published at his own expense. Since his arrest, he has been banned from publishing books. His earlier works were withdrawn. He is jobless and without financial support.

➔ On Feb. 3, 2007, journalist Shirko Jahani was freed on bail of 50 million Rials (approx. US \$5,400). Jahani was the correspondent for the Turkish news agency Euphrat in the northwestern city of Mahabad. He was summoned Nov. 27, 2006 to the local prosecutor's office and arrested for critical articles published abroad. He was held incommunicado until late December 2006, when he was allowed to phone his wife but could not say his whereabouts.



## **Relevant Laws**

### **Constitution**

**Art. 23:** The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief.

**Art. 24:** Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public.

### **Press Law**

The press law of 1986 bans censorship but sets conditions for stiff punishment of content deemed inappropriate. Art. 4 says "no government or non-government official should resort to coercive measures against the press...or attempt to censor and control the press."

But **Art. 6** among other things, bans publishing materials that might "damage the foundation of the Islamic Republic...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...or offending the Leader of the Revolution and recognized religious authorities...or quoting articles from the dissident press, parties and groups which oppose Islam in such a manner as to propagate such ideas."

**Art. 25:** Holds writers who "instigate and encourage people to commit crimes against the domestic security or foreign policies of the State" responsible as accomplices to those crimes, "should those actions bear adverse consequences. ... If no evidence is found of such consequences, (writers) shall be subject to a decision of the religious judge according to Islamic penal code."

**Art. 26:** Whoever insults Islam and things it holds holy 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.

### **Penal Code**

**Art. 500:** Anyone who undertakes any form of propaganda against the State...will be sentenced to between three months and one year in prison.

**Art. 513:** Offenses deemed an "insult to religion" may be punished by death or imprisonment for up to five years.

**Art. 609:** Criminalizes criticism of officials in connection with their work, and calls for punishment of a fine, 74 lashes, or three to six months imprisonment for such "insults."

**Art. 698:** Provides sentences of up to two years in prison or up to 74 lashes for those convicted of intentionally creating "anxiety and unease in the public's mind," spreading "false rumors," or writing about "acts which are not true."

## IRAQ

Population: 26.7 Million

Press Freedom Rating: Not Free

Freedom of opinion and press freedom are guaranteed in Art. 36 of the 2005 Constitution, provided those rights are exercised “in a way that does not violate public order or morality.” But Iraqi laws restrict the press and allow for fines and up to seven years imprisonment for anyone insulting the National Assembly, the government, or public authorities.



### Developments

➔ The Parliament of the Kurdistan Region approved a new press bill in December 2007, drafted in cooperation with the Kurdistan Journalists’ Syndicate. The draft is rather restrictive and proposes fines of up to ten million Dinars (approx. US \$8,200) for various vaguely worded offenses such as disturbing security, spreading fear, and encouraging terrorism. The new law could be chilling for the many journalists already facing various frivolous libel charges. Due to pressure from the Kurdish media and watchdog groups like the Journalistic Freedoms Observatory, President Masoud Barzani refused to sign the law and returned it to the Kurdish regional Parliament for revision.

### Relevant Laws

Iraq’s new Constitution was put to a referendum and approved in October 2005. It provides for freedom of expression and many other human rights.

**Art. 38:** The state shall guarantee in a way that does not violate public order and morality:

- A. Freedom of expression using all the means.
- B. Freedom of press, printing, advertisement, media and publication.
- C. Freedom of assembly and peaceful demonstration and this shall be regulated by law.

### **Laws in Need of Revision**

The London-based Article 19 organization produced a report in 2006, “Media Policy in Iraq,” reviewing media laws and recommending future legislation. It noted that many restrictive laws date from Saddam Hussein’s regime, while others were enacted by the post-Saddam Coalition Provisional Authority. The report cited the following:

### **Penal Code**

**Art. 202:** Makes it a crime, punishable by up to ten years imprisonment, to insult “the Arab community or the Iraqi people or any section of the population or the national flag or the state emblem.”

**Art. 227:** Makes it a crime, punishable by up to two years imprisonment, publicly to insult a foreign country, flag or national emblem, or an international organization with an office in Iraq;

**Art. 229:** Makes it a crime, punishable by up to two years imprisonment, to insult a public servant or body in the course of their work;

**Art. 372:** Makes it a crime, punishable by up to three years imprisonment, to attack the creed of a religious minority or to insult a symbol or a person who constitutes an object of sanctification, worship or reverence to a religious minority;

**Article 433:** Makes calumny (accusing someone of having committed a crime or bringing them into serious disrepute) a crime, punishable by detention and a fine;

**Art. 434:** Makes it a crime, punishable by up to one year imprisonment, to direct abuse at others that has the effect of compromising their honor or status, or that offends them. Publication of such “abuse” in the media is considered an aggravating circumstance;

**Art. 435:** Makes it a crime, punishable by up to six months imprisonment, to insult a person in a personal meeting, during the course of a telephone conversation or in a private letter.

**Art. 438:** Makes it a crime, punishable by up to two years imprisonment, to publish private information where this causes offense.

## JORDAN

Population: 5.5 Million

Press Freedom Rating: Not Free



A number of events targeting independent journalists in 2007 and 2008 show that, despite media law reforms, press freedom is deteriorating in Jordan. On March 21, 2007, the lower house of Parliament voted to eliminate Art. 38 of the press law, which allows imprisonment of journalists. The upper house (the King's Council) had recommended the move several times in recent years, but until 2007, had met with repeated resistance by the lower house. Yet, Art. 42 (2) was amended to read: "Detention as a result of enunciation of an opinion in speech, writing or through other means of expression is not allowed."

While this represents a victory for the Jordanian press, it is offset by higher fines related to defamation -- increased when the imprisonment provision was cancelled. Fines for defamation, libel, insult to religious beliefs or publication of material that fuel sectarianism or racism now reach US \$40,000.

### Developments

➔ On Sept. 25, 2007, the Jordanian Press and Publications Department announced that online publications would be monitored like print media. It cited the press law's Art. 2, saying the legal definition of a publication "clearly indicates that the electronic media is under our jurisdiction. What applies to print media applies to electronic media in terms of legal responsibility." The Department said it was "not going to censor contents of web sites, but if there was a breach of law, we will take necessary measures."

➔ In Jordan's first arrest for online activities, former parliamentarian Ahmad Oweidi Abbadi was incarcerated May 3, 2007 after posting an open letter to US Senate Majority Leader Harry Reid, accusing King Abdullah's government of corruption. A member of Parliament until 2001, Abbadi heads the Jordan National Movement, a party without official recognition. On Oct. 9, 2007, a state security court sentenced Abbadi to two years in prison for "attacking the State's prestige and reputation" by posting his criticisms online. Abbadi's detention and sentencing were in contradiction with revised Art. 42 (2).

➔ After four years' hesitation, the lower house voted March 21, 2007 to drop a press law proviso allowing imprisonment of journalists, following the upper house's insistence that the relevant Art. 38 be abrogated. The lower house had rejected calls throughout 2006 to drop the controversial article. In mid-March, the upper house, known as the King's Council, returned the bill to the lower house, recommending that Art. 38 be dropped. The lower house then accepted the change, presented as a royal wish. King Abdullah II responded to pleas by journalists at a royal policy briefing for the press and politicians.

Parliament replaced the imprisonment provision with very heavy fines reaching 28,000 Dinars (approx. US \$40,000) for defamation, libel, insult to religious beliefs, or

publishing material that fuels sectarianism or racism. Other laws still allow incarceration of journalists and writers, including the Penal Code and the State Security Court Law.

➔ On Jan. 27, 2007 Jordanian Foreign Minister Abul Elah Alkhateeb filed suit against *Al Hilal* weekly newspaper. He brought it against journalist Ahmed Salama and editor-in-chief Naser Kamsh, accusing them of defamation, insult and publishing false news. They criticized his performance in their issue of Jan. 18-24, 2007. A column titled “If They Believe,” questioned Alkhateeb’s absence from a meeting between King Abdullah II and US Secretary of State Condoleezza Rice. The paper said the minister was at home feting the start of a new newspaper meant to “Arabize” the Orthodox Church. Another article in the same issue, titled “We Ask You to Leave,” criticized the general performance of the Jordanian government. In a hearing at the attorney general’s office Feb. 4, Kamsh rejected accusations against him. The case was still before the courts.

### **Relevant Laws**

#### **The Press and Publication Law of 1998**

**Art. 5:** Publications shall respect the truth and refrain from publishing anything that conflicts with the principles of freedom, national responsibility, human rights, and values of the Arab and Islamic nation.

**Art. 7:** The code and ethics of journalism are binding on the journalist. They include:

- A. Respecting public liberties, safeguarding the rights of others, and refraining from encroaching on their private life.
- B. Considering the freedom of thought, opinion, expression, and access to information an equal right for the press and the citizen.
- C. Maintaining balance, objectivity, and honesty in presenting press material.
- D. Refraining from publishing anything that might incite violence or discord among citizens.

**Art. 195:** Became more restrictive, with introduction of a penalty of one to three years’ imprisonment for lèse-majesté -- insult to the dignity of the king.

**Art. 150:** Bans statements “intended to, or (that) results in, stirring up sectarian or racial tension or strife among different elements of the nation.”

**Art. 278:** Bans publishing “anything in print or writing or a picture or drawing or symbol that leads to an insult of the religious feelings of other persons or their religious faith.”

## KUWAIT

Population: 2.6 Million

Press Freedom Rating: Partly Free



Kuwait's revised 2006 Press and Publications Law extended some important protections for the media, but the government continued to censor and prosecute the media for reporting on prohibited religious and political topics. Freedom of speech and freedom of the press are protected by Arts. 36 and 37 of the Constitution, but only "in accordance with the conditions and in the circumstances defined by law." The 2006 press law prohibits publication of material that insults God, the Prophets, or Islam and forbids criticism of the Emir or calls for overthrow of the regime. Any citizen may press criminal charges against an author deemed to have violated those proscriptions. Penalties for criticizing Islam were increased and may include prison sentences of up to one year and fines up to 20,000 Kuwaiti Dinars (approx. US \$69,000).

### Developments

➔ On Aug. 18, 2007, Bashar al-Sayegh, editor of the daily *Al-Jarida*, was arrested and charged with insulting the Emir, based on a comment posted by someone else on an open forum news web site he was hosting. Jassim al-Qames, another editor for the paper, was arrested, beaten, and detained for photographing al-Sayegh's arrest. The two were released several days later after interrogation. The person who made the comment at issue, Nayef Abdullah al-Ajmi, was arrested Aug. 21, 2007.

### Relevant Laws

#### **Constitution**

The Kuwaiti Constitution guarantees freedom of speech and scientific research (Art. 36), as well as freedom of the press, publishing, and printing (Art. 37). But the Constitution qualifies those freedoms by requiring that they be exercised as specified by law.

#### **The 2006 Law of Publications**

**Art. 1:** The press, printing and publishing freedom is guaranteed pursuant to the provisions of the present law.

#### **Chapter 1, The publications**

**Art. 3:** Any person may establish or exploit a printing press, open a store for selling or renting publications, publishing, distributing or translating, a bureau of publicity and advertising or a company for art production regarding the present law after receiving a permit from the competent ministry.

#### **Chapter 2, The journal**

**Art. 8:** The journals shall not be subject to any previous censorship.

### **Chapter 3, The banned matters in the publication or journal and the punishments**

**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.
- 3- Offend the morals, incite to breach the public order or laws, or to commit crimes, even if they do not take place.
- 4- Publish information about the official secret communications and the agreements or conventions held by the Kuwaiti government before being issued in the official gazette unless by a special permit from the competent ministry.
- 5- Affect the national currency rate or what may lead to shake the trust in the economic situation of the country, or declare the bankruptcy of traders, trading companies, banks or money changers unless by a special authorization from the competent court.
- 6- Reveal the proceedings of any meeting or what is written in documents, instruments, decrees or any papers or publications that the Constitution or any law ordered to be kept secret or unpublished, even if they are true. Publishing shall be restricted to official statements.
- 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] who is charged with a public service, or attributing untrue words or acts including defamation or insult to his person.
- 9- Attack the relations between Kuwait and other Arabic or friendly countries if such was done through media campaigns.
- 10- Deviation of a specialized journal from the object of the permit granted to it.

**Art. 28:** If an incitement to bring down the regime in the country is published, and such incitement includes an urging to change this regime by force or by illegal ways or a calling to change the social and economic situation of the country, or to follow rites aiming at the destruction of the basic rules in Kuwait illegally, the editor-in-chief and the article's writer shall be punished by the penalty stipulated in Art. 29, Para 1 of Law no. 331 of 1970 to amend some of the penal law's provisions no. 19 of 1960.

## LEBANON

Population: 4.1 Million

Press Freedom Rating: Partly Free

Many Lebanese media outlets are owned or operated by political groups. Their reporters are seen as affiliated with political movements.



### Developments

→ On Jan. 10, 2008, the prosecutor general of Bekaa arrested four students at Saint Joseph University in Zahleh, eastern Lebanon, on charges of slander, libel and public insult following conversations among them on a Facebook web page that were deemed inappropriate by one of their colleagues who pressed the charges.

The four students were arrested just a few days before their final exams, although the act the students were accused of occurred in November 2007. This raised questions about the timing of the arrests, denying the students the right to take their exams and meant the loss of an academic year. The university's students staged a protest sit-in on Jan. 14 to show solidarity with their arrested colleagues. The four faced jail terms of up to one year.

### Relevant Laws

**Art. 16:** Whoever, by means of publications, announcements or any other means, threatens any individual to reveal a fact, to disclose it or to inform about it and if this fact is likely to undermine the dignity or honor of this individual or his family with the purpose of forcing him to obtain for him or for a third party an illegal advantage, shall be punished by six months to two years imprisonment and/or a fine of 10,000 to 15,000 Lebanese Pounds (approx. US \$6.60-\$10), independent of any damages that may be granted to the victim by the judgment. The fine cannot be less than the minimum. In determining individual rights, the court must consider material and moral loss, suffered directly or indirectly, on condition that it results from the infraction.

The punishment provided for in the first paragraph of this article is equally applicable to journalists who attempt to practice blackmail upon the guests of Lebanon. If the offenders have claimed falsely to be journalists, the punishment will be doubled. They may be immediately placed in preventive detention and held until the outcome of the proceeding.

Whoever, having been by definitive decision condemned as a consequence of one of the two preceding paragraphs of the present article, then commits, during a period of five years after the expiration of this punishment, the same offense or other offenses covered by the same paragraph, is to be punished by double the punishment provided for in the first paragraph. The newspaper shall be suspended for 15 days. In case of a subsequent offense, the suspension is extended to three months.



**Art. 20:** Defamation committed by means of the press is punishable by three months to one year imprisonment and/or a fine of 3,000 to 5,000 Lebanese Pounds (approx. US \$2-\$3.30). In the event of a subsequent offense, neither of these two punishments may be less than its minimum.

**Art. 21:** Insult committed by means of the press is punishable by one to six months imprisonment and/or a fine of 1,000 to 3,000 Lebanese Pounds (approx. US \$.70-\$2). In the event of a subsequent offense, neither of these two punishments may be less than its minimum.

**Art. 22:** Grave offense, insult or defamation committed against a civil servant as a result of his post or position is punishable by one to six months imprisonment and/or a fine of 3,000 to 5,000 Lebanese Pounds. In the event of a subsequent offense, neither of these two punishments may be less than its minimum.

When the grave offense, insult or defamation is committed against one who exercises power, the punishment is three months to a year imprisonment. When it is committed against a magistrate sitting in a hearing, the punishment is one to two years imprisonment and/or a fine of 5,000 to 10,000 Lebanese Pounds (approx. US \$3.30-\$6.60). In the event of a subsequent offense, neither of these two punishments may be less than its minimum.

In all of the cases provided for in Arts. 20, 21 and 22, the court, in determining individual rights, must consider material and moral loss, caused directly or indirectly, on condition that it results from the infraction. An action for defamation is instituted as a result of the complaint of the injured party.

**Art. 23:** In the event of insult to the head of state committed by a newspaper or if a newspaper publishes defamation, insult or grave offense with regard to the head of state or the head of a foreign state, a public legal action is begun without the injured party having made any complaint.

The public prosecutor of an appeals court has the right to seize copies of the newspaper and send them to the court of competent jurisdiction, which will have the responsibility of announcing, in accordance with the results of the legal proceedings, a punishment of two months to two years imprisonment and/or a fine of 100 million to 200 million Lebanese Pounds (approx. US \$66,000-\$132,000). In no case may the punishment of imprisonment be less than one month and the fine less than its minimum.

Whoever, having been by definitive decision condemned as a consequence of this article, then commits, before the passing of a period of five years following this punishment or after its prescription, the same offense or other offenses covered by this article, shall be punished by double the punishment provided for in the second paragraph, accompanied by suspension of the newspaper for two months.

**Audio-Visual Media Law, 1994:**

Prohibits the broadcast of material defaming the head of state or religious leaders.

## MOROCCO

Population: 30.5 Million

Press Freedom Rating: Not Free



Throughout 2007 and 2008, there was discussion of amending the country's 2002 press law. The amendments would keep in place offenses such as "insulting the King" and "insulting the sacredness of institutions," punishable by imprisonment of up to five years, and for which judges can suspend a publication or permanently close it. The proposals also stated that the government would still ban local and foreign newspapers that "undermine Islam, the monarchy, national territorial integrity or public order."

### Developments

➔ Rachid Nini, publisher of the newspaper *Al-Massae*, was fined 600,000 Dirhams (approx. US \$75,000) by a Casablanca court Dec. 1, 2008 for insulting a prominent lawyer. The ruling increased the likelihood that Morocco's leading Arabic-language daily would be forced to close. The suit was brought by Mohammed Ziane, head of the Rabat bar association. He represented four deputy prosecutors of the northern town of Ksar Al Kébir who obtained massive damages award (see below) which neither Nini nor the newspaper has been able to pay.

Ziane's suit was prompted by an article alleging he fraudulently acquired land in the north of the country. "The courts have become a tool for censoring the independent press in Morocco," Nini told Reporters Without Borders, "Whoever sues our newspaper is nowadays guaranteed to win." Nini also noted: "This ruling is very serious because it sets a legal precedent for press cases. Tomorrow, another newspaper could be ordered to pay a similarly astronomical sum. This ruling is a disgrace for my country."

➔ On March 25, 2008 a court ordered Nini to pay a total of 6 million Dirhams (approx. US \$750,000) in damages and a 120,000 Dirham (approx. US \$15,000) fine, in suits filed by the four deputy prosecutors alleging libel and public insult. The prosecutors filed separate suits in early February 2008 claiming they were defamed in a report printed Nov. 18. The article said that the unnamed regional officials had attended a gay marriage.

➔ In July 2007, the Moroccan government confiscated issues of an Arabic-language weekly *Nichane* and the French-language weekly *TelQuel* for publishing an editorial and articles considered by the government to be "disrespectful" of the King, against public morality, and offending Islam. Their editor, Ahmed Benchemsi, was held for questioning.

In March 2007, two journalists of the same weekly, *Nichane*, Driss Ksikes and Sanaa Al Aji, were given a three-year suspended sentence and fined some 60,000 Dirhams (approx. US \$7,500) over an article on Moroccan jokes on Islam, sex and politics. The magazine was banned for two months.

## **Relevant Laws**

Forbidden topics for Moroccan writers include the sacred status of the King, Islam as the state religion, Morocco's claim to the Western Sahara territory, the army or morals. The bans are contained in the 2002 Press Code, the penal code, the anti-terror law and a draft law on opinion polls. The same bans also appear in an ethical charter adopted by the association of press editors.

The parliamentary commission for foreign affairs and national defense adopted the press law Feb. 8, 2002. This law maintains prison sentences for defamation of the King, princes or princesses. Those convicted of such offences may be imprisoned for three to five years, compared with five to 20 years in the previous law.

## **Constitution**

**Art. 9:** Guarantees "freedom of opinion, expression in all its forms, and public gathering. ... No limitation, except by law, shall be put to the exercise of such freedoms."

## **The 1958 Press Code, as amended in 2002:**

**Art. 29:** Maintains the government's right to ban Moroccan or foreign publications "if the publications are prejudicial to Islam, the monarchy, territorial integrity or public order."

**Art. 73:** The party accused of libel "must prove the truth of the libelous facts" by providing the prosecutor's office with "a copy of the documents; (and) the names, professions, and addresses of the witnesses through whom he intends to prove his case."

**Art. 29:** The import into Morocco of newspapers or writings, periodical or not, printed outside Morocco may be prohibited by decision of the Communication Minister specifying the reasons, when they infringe the Islamic religion, the monarchical form of government, the territorial integrity, the respect for the King or public order.

**Art. 38:** Those persons are punished who are accomplices of 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 broadcasting or electronic media, which act directly incites the perpetrator(s) to commit the said act, 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 and the royal princes and princesses is punished by imprisonment of three to five years and of a fine of 10,000 to 100,000 Dirhams (approx. US \$1,250-\$12,500). The same penalty may apply when the publication of a newspaper or writing infringes 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. 44:** Any allegation or charge of a fact that infringes the honor or consideration for the persons or constituted bodies to which the fact is imputed constitutes defamation. Any abusive utterance, expression of contempt infringing 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, using one of the means specified in Art. 38, against the courts, tribunals, armed term of imprisonment of one month to one year and of a fine of 1,200 to 100,000 Dirhams (approx. US \$150-\$12,500) or by one alone of those penalties.

**Art. 46:** The same penalties may be applied in cases of defamation committed by the same means against persons in their quality of minister, singly or severally, of official, designated agent of public authority, and person charged with a temporary public function or mandate, an auxiliary of justice or a witness by reason of his testimony. Defamation of those persons, concerning their private lives, is punishable by the penalties provided for in Art. 47 hereunder.

**Art. 47:** Defamation committed against private persons by one of the means specified in Art. 38 is punishable by a term of imprisonment of one month to six months and by a fine of 10,000 to 50,000 Dirhams (approx. US \$1,250-\$6,250) or by one alone of those penalties.

**Art. 48:** Insult committed using the same means against bodies and persons designated in Arts. 45 and 46 is punishable by a fine of 50,000 to 100,000 Dirhams (approx. US \$6,250-\$12,500). Insult committed in the same way against private persons, when the insult has not been provoked, is punishable by a fine of 5,000 to 50,000 Dirhams (approx. US \$625-\$6,250).

**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 constituted bodies; the armed forces of land, sea or air; public administrations 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 legally designated as responsible for the publication must hold the proofs establishing the facts that they publish before their publication.

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 infraction that has been amnestied, that is subject to the statute of limitations or that has been expunged in a procedure of rehabilitation or of reversal of sentence.

**Art. 50:** Any republication of an allegation that has been ruled to be defamatory, shall be considered to have been made in bad faith, unless the person responsible proves the contrary.

**Art. 51:** Anyone who transmits open correspondence containing a defamation, either of private persons or against constituted bodies or persons enumerated in Arts. 41, 45, 46, 52, and 53, through the post and telegraph service or by other electronic means shall be punishable by a maximum term of imprisonment of one month and a fine of 1,200 to 5,000 Dirhams (approx. US \$150-\$625) or solely one of those penalties.

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-\$150).

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 and a fine of 5,000 to 20,000 Dirhams (approx. US \$625-\$2,500) or solely one of those penalties.

#### **Section 4: Misdemeanors against Chiefs of State and Diplomatic Agents**

**Art. 52:** Offenses offensive statements committed 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 \$1,250-\$12,500) or solely one of those penalties.

**Art. 53:** Public outrages against the person and the dignity of foreign diplomatic or consular agents officially accredited or assigned to Our Majesty are punishable by a term of imprisonment of one to six months and a fine of 5,000 to 30,000 Dirhams (approx. US \$625-\$3,750) or solely one of those penalties.

**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 nor 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, issue orders to 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 have 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, elimination or destruction of all the copies placed on sale, distributed or displayed to the public.

**Art. 71:** In case of defamation of private persons 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 person defamed or insulted;

2 - In case of insult or defamation against the courts, tribunals or other constituted 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 the case of insult or defamation against officials or of persons holding public authority, prosecution will be undertaken on the basis of their complaint or of that of the governmental authority to whom they are responsible, addressed directly to the Minister of Justice;

5 - In the case of defamation against an auxiliary of justice and of a witness, prosecution will be undertaken solely on the basis of a complaint by the auxiliary or by the witness;

6 - In the 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 the case of infringement of the private life of private persons under Additional Art. 51 herein, prosecution will be undertaken solely on the basis of a complaint by the person against whom the allegations or false statements of fact were made.

## SAUDI ARABIA

Population: 23.7 Million

Press Freedom Rating: Not Free



The media environment in Saudi Arabia remained among the most repressive in the Arab world in 2007 and 2008. The Basic Law does not provide for press freedom, leaving the media to be regulated under the 1963 Publishing and Printing Law. The 49 provisions of the law cover the establishment of media outlets, the rights and responsibilities of journalists, and penalties for violation. The press, according to the government and the conservative religious establishment, is a tool to educate the masses, propagate government views, and promote national unity.

Criticism of the royal family and the religious authorities is forbidden, and press offenses are punishable by fines and imprisonment. Media outlets in Saudi Arabia are administered by the Ministry of Culture and Information, which uses laws, decrees, and interventions by the royal family to restrict media freedom.

### Developments

→ A Saudi web critic was charged with insulting Islam after he criticized the religious police on his web site.

On May 5, 2008, the prosecution service in Jeddah charged Ra'if Badawi with "setting up an electronic site that insults Islam," and referred the case to court, asking for a five-year prison sentence and a 3 million Riyal (approx. US \$800,000) fine. Unknown persons have hacked Badawi's web site many times, and have published his phone numbers, work address, and a threat on the hacked site: "Oh, you retard, you are in the land of Mohammed, peace be upon him. Underline 'Mohammed' with 1,000 lines before 1,000 swords are put above your neck!" Prosecutors have not investigated the hackers or the death threats against Badawi.

The prosecution detained Badawi in March 2008 for a day to interrogate him about his web site, which he uses to detail abuses by the Saudi religious police and to question the prevailing interpretation of Islam. After being threatened with arrest for his online activities and receiving personal threats of physical harm, Badawi fled Saudi Arabia.

### Relevant Laws

Legislation is by resolution of the Council of Ministers and the Shura Council, ratified by royal decree, and must be compatible with the Sharia. Any opposition to or criticism of religion, the royal family or the regime is forbidden.

The King announced creation of an independent journalists organization in early 2003. The Saudi Journalists Association attracted some criticism because its founding

documents were promulgated by the government, and the Information Ministry must approve all candidates for the board.

- The Ministry of Information regulates radio and television broadcasts.
- All Saudi newspapers and periodicals are created by royal decree. There are no licensing procedures.
- Newspapers are privately owned but receive state subsidies. Their publishers and editors are appointed or at least approved by the government.
- The government owns the Saudi Press Agency, which is controlled by the Information Ministry and expresses government views.
- The foreign press is systematically censored, with undesirable articles and pictures blacked out.
- Internet access is filtered to block web sites deemed offensive to Islam or a threat to state security.

Saudi Arabia's **Basic Rules for Governance** serve as its constitution:

**Art. 39:** Information, publication, and all other media shall employ courteous language and the state's regulations, and they shall contribute to the education of the nation and the bolstering of its unity. All acts that foster sedition or division or harm the state's security and its public relations or detract from man's dignity and rights shall be prohibited.

#### **Press and Publications Law:**

**Art. 9:** Requires publications reporting on national security issues not to "compromise the country's security, its public order, or serve foreign interests that clash with national interests."

Upon granting the print license the following criteria shall be respected:

- 1- The print should not violate the provisions of the Islamic Law
- 2- That it will not lead to disturb the country peace and its public order or to serve foreign interests that are in contradiction with the national interest.
- 3- That it will not lead to the stimulation of confessional feud and the diffusion of the dissociation spirit between citizens.
- 4- That it will not lead to the prejudice of the persons dignity and freedom or to blackmail them or to make harm to their reputation or the trade names.
- 5- That it will not lead to support or exhort crimes
- 6- That it will not injure to the economic or health situation in the Kingdom
- 7- That it will not disclose the investigation or debate facts before obtaining the relevant permission from the competent authority
- 8- That it will abide by the objective, constructive criticism aiming at the public interest and based on true facts and evidences.



## SYRIA

Population: 19.4 Million

Press Freedom Rating: Not Free

President Bashar Al-Assad's rule has been characterized by repressive policies toward the press, and online media in particular. The Constitution provides for freedom of speech and of the press, but a number of repressive laws restrict those rights in practice.



### Developments

➔ In April 2008, the Syrian government filed defamation charges against Mazen Darwich, a prominent Syrian journalist and director of the Syrian Center for Media and Freedom of Expression. A military court tried Darwich for libeling and defaming the general state administration. The charge was filed by the state prosecution on recommendation of a local police station after a report in which Darwich criticized the authorities' delayed intervention in a January riot in a Damascus suburb. Darwich claimed that authorities intervened too late to stop the riot, resulting in the death of a civilian. When his report was published, Darwich was approached by Syrian police officers, who tried to force him to change parts of the report.

Syrian authorities have repeatedly attempted to silence Darwich for his outspoken publications and his work for freedom of expression in Syria. He was denied the right to travel in May and December 2007.

### Relevant Laws

**Though Art. 38 of the Constitution** guarantees “the freedom of the press, of printing, and publication in accordance with the law,” and states that “every citizen has the right to freely and openly express his views in words, in writing, and through all other means of expression,” there are effectively no legal and social protections for free speech in Syria.

**Syria's 1963 Emergency Laws**, enacted when the Ba'ath party seized power in a military coup, permit detention without trial of anyone believed to be acting “against the national unity.”

The Emergency Law authorizes the government to conduct preventive arrests, and overrides Constitutional and Penal Code provisions against arbitrary arrest and detention. It authorizes the prosecution of anyone “opposing the goals of the revolution,” “shaking the confidence of the masses in the aims of the revolution,” or attempting to “change the economic or social structure of the state.”

The government justifies the Emergency Law by the state of war with Israel and past threats from terrorist groups.

**The 2001 Publications Law** provides imprisonment and financial penalties as penalties for publication of “inaccurate” information, particularly if it “causes public unrest, disrupts international relations, violates the dignity of the state of national unity, affects the morale of the armed force, or inflicts harm on the national economy and the safety of the monetary system.” Prison terms range from one to three years and fines from 500,000 to 1 million Syrian Pounds (approx. US \$10,000-\$20,000). The law also allows the government to deny or revoke publishing licenses for reasons “related to the public interest.”

➔ Repressive media policies are enforced severely against cyber dissidents. The Syrian regime uses sophisticated surveillance methods to monitor all media, and in 2007 and 2008, encouraged Internet café owners to spy on customers and report those that visit “sensitive” sites. In response to anonymous postings on social and political sites, Amr Salem, Syria’s Minister of Communications and Technology, issued a decree requiring all web site owners to “display the name and e-mail of the writer of any article or comment” which appears on the site. Failure to do so may result in temporary or permanent bans of a web site.

Syrian authorities ban a wide number of web sites on a range of topics. Web sites that criticize government policies or support opposition groups are subjected to the most substantial filtering. Online versions of foreign-based Arabic newspapers such as the Beirut-based *Al Mustaqbal*, the London-based *Al Quds Al Arabi*, and the Kuwaiti-based *Al Seyassah* are routinely blocked, as are those associated with Syrian opposition or Kurdish political parties. Google and YouTube are also routinely censored.

## TUNISIA

Population: 10.1 Million

Press Freedom Rating: Not Free



### Developments

→ Tunisian comedian Hedi Ouled Baballah was arrested, sentenced and jailed, apparently for a sketch in which he imitated President Zine el Abidine Ben Ali, but those were not the formal charges. On March 20, 2008, he was conditionally released after two months' imprisonment. He was arrested at a highway checkpoint on Jan. 14 and charged with "possession of a classified narcotic substance" and sentenced to one year in prison and a fine of 1,000 Dinars (approx. US \$800).

At his Feb. 4 court hearing, Ouled Baballah denied any knowledge of the drug and alleged a police conspiracy against him following his latest sketch. This hypothesis seemed the most likely, according to an independent Tunisian NGO, the Observatory for the Freedom of Press, Publishing and Creation in Tunisia (OLPEC). The comedian had just produced an audacious sketch in a private setting, where he imitated President Ben Ali. The sketch was widely circulated in Tunisia via a cell phone recording.

Ouled Baballah had previously been arrested and detained for three days and beaten in a police station in March 2007 following production of a first sketch, also in a private setting, where he imitated President Ben Ali.

Dissidents are never charged for political acts as such, but are instead falsely accused of more "dishonorable" offenses, according to OLPEC.

### Relevant Laws

The country's press law, most recently amended in 2001, makes defamation of a public official a criminal offense, subjecting a reporter to potential penalties of at least one year in prison and a fine of 120 Dinars (approx. US \$90). Printing false reports that "upset public order" may result in up to three years in prison and a fine of about US \$1,500.

**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 \$860-\$1,720). 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 \$86-\$720).

**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 identity is rendered possible by the terms of the speech, cries, threats, written or printed materials, placards, drawings or posters that are called into question.

**Art. 53:** Defamation of individuals shall be punishable by 16 days' to 6 months' imprisonment and/or a fine. The same article adds that 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, if its object is to stir up hatred among citizens or 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.

## YEMEN

Population: 21.7 Million

Press Freedom Rating: Not Free



While the rights to freedom of expression and a free press are guaranteed under Art. 41 of the Constitution, the government continues to use the restrictive 1990 Press and Publications Law to prosecute journalists and violate the rights of the media. Despite steps initiated in 2004 to enact a revised press law, debates continued through 2008 without resolution. Art. 103 of the press law prohibits journalists from criticizing the head of state, or publishing material that undermines public morality, prejudices the dignity of individuals by smears and defamation, or distorts the image of the Yemeni, Arab or Islamic heritage. Penalties for such press violations range from fines to prison sentences of up to one year.

### Developments

➔ In early 2009, singer and comedian Fahd al-Qarni faced renewed charges of insulting the President. The charges dated to September 2006, when al-Qarni made cassette tapes that mixed traditional folk songs with comedy and criticism of government policies. Although al-Qarni was pardoned in September 2008, he was charged again for the same offense. The Article 19 organization said this was “a clear example of the censoring of artists who use their medium... as a tool to criticize politics.”

### Relevant Laws

The Constitution provides for freedom of the press, but practically speaking, the laws do not support this.

**Penal Code:** Provides for fines and imprisonment for publishing “false information” that “threatens public order or the public interest.”

**Art. 103 of the Press and Publications Law:** Prohibits direct personal criticism of the head of state. All persons working in the mass media especially the managers in the radio and television as well as the journal’s owner, the managing editor-in-chief, the printing press owner, the publishing houses and the journalists shall not print, publish, circulate and announce the following:

1. What affects the Islamic doctrine and eminent principles or dishonors the monotheistic religions and the human beliefs.
2. What affects the country’s higher interest such as documents and secret information or revealing the secrets of security and defense of the nation according to the law.
3. What may lead to provoke the tribal, confessional, ethnical, regional or genealogical feuds and propagate the disunity and discrimination between the members of the society or what leads them to expiation.

4. What provokes the spread of thoughts that contradict the goals and principles of the Yemeni revolution or affects the national unity or distorts the Yemeni, Arabic and Islamic tradition and civilization.
5. What constitutes obscene acts and what affects the persons' dignity and the private life for propaganda and defamation.
6. The proceedings of the secret sessions held by the state higher authorities.
7. The facts of an investigation during the interrogation and the trial which affect the justice procession and forbid the publication of information from the inspection and detection service, the prosecution and the court.
8. ... false statements, announcements, information or news [intended] to trouble the economic situation and create disorganization and chaos in the country.
9. Incitement to use violence and terrorism.
10. The publicity including words or photos that are inconsistent with the Islamic values and morals or defame and slander the persons' reputation, infringe upon others' rights or mislead people.
11. The publicity of medical and cosmetic products and foodstuffs without a permit from the competent authority.
12. ... direct ... criticism to the person of the President. Attributing to the President words or publishing his photos shall be upon a previous permit from the President's bureau or the Ministry of Information unless such words or photos were in a public speech or interview. Such provisions shall not be necessarily applied to the objective and constructive criticism.

**World Press Freedom Committee Affiliates**

American Society of Newspaper Editors, Reston, Virginia  
 American Women in Radio and Television, Inc. McLean, Virginia  
 Asia-Pacific Institute for Broadcasting Development, Kuala Lumpur, Malaysia  
 Asociación de Diarios Colombianos (Andiarios), Bogota, Colombia  
 Asociación de Editores de Diarios Españoles, Madrid  
 Asociación de Entidades Periodísticas Argentinas, Buenos Aires  
 Association of Hungarian Journalists, Budapest  
 Associated Press Broadcasters, New York City  
 Associated Press Managing Editors, New York City  
 Association for Women in Communications, Alexandria, Virginia  
 Bloque de Prensa-Venezuela, Caracas  
 Brazilian Newspaper Association, Brasilia  
 Canadian Newspaper Association, Toronto  
 Central and Eastern European Media Centre-Warsaw  
 Commercial Radio Australia, Sydney  
 Committee to Protect Journalists, New York City  
 Commonwealth Press Union Trust, London  
 Czech Publishers Association, Prague  
 Freedom Forum, Washington, DC  
 Freedom House, New York City  
 Glasnost Defense Foundation, Moscow  
 Hong Kong Journalists Association, Hong Kong  
 Inter American Press Association, Miami, Florida  
 International Association of Broadcasting, Montevideo, Uruguay  
 International Press Institute, Vienna  
 International Women's Media Foundation, Washington, DC  
 National Association of Broadcasters, Washington, DC  
 National Conference of Editorial Writers, Harrisburg, Pennsylvania  
 National Federation of Press Women, Arlington, Virginia  
 National Newspaper Association, Columbia, Missouri  
 National Press Club of Canada, Ottawa  
 Netherlands Association of Newspaper Editors  
 Newspaper Association of America, Arlington, Virginia  
 The Newspaper Guild-CWA, Washington, DC  
 Nihon Shinbun Kyokai (Japan Newspaper Publishers & Editors Assn.), Tokyo  
 North American Broadcasters Association, Toronto  
 Organisation Camerounaise pour la Liberté de la Presse, Douala, Cameroon  
 Overseas Press Club, New York City  
 Pacific Islands News Association, Suva, Fiji  
 Pakistan Press Foundation, Karachi, Pakistan  
 Press Foundation of Asia, Manila  
 Radio-Television News Directors Association, Fredericksburg, Virginia  
 Reporters Committee for Freedom of the Press, Arlington, Virginia  
 Sociedad Dominicana de Diarios, Santo Domingo, Dominican Republic  
 Society of Professional Journalists, Indianapolis, Indiana