



Decriminalising defamation:

an IFJ campaign resource for defeating criminal defamation

IFJ
IFJ
IFJ

CONTENTS



1. Introduction	3
2. What is defamation? Why decriminalise it?	4
3. Recent defamation cases around the world	6
4. Staying out of the courtroom	11
5. In-house systems: press ombudsmen, quick corrections and prominent apologies	11
6. Press councils	13
7. Codes of ethics	15
8. Principles of a model defamation law	16
9. Case study: Victory over criminal libel in Ghana	18
10. Case study: <i>Tempo v Winata</i> in Indonesia	20
11. Case study: Getting free speech in Sri Lanka	22
12. A campaign checklist	24
13. Useful resources	26

Decriminalising defamation: an IFJ campaign resource for defeating criminal defamation



Published by: International Federation of Journalists, 2005

Authors: Emma Walters and Alex Johnson

Thanks to: Gabriel Baglo, Bright Kwame Blewu, Olivia Brian, Sunanda Deshapriya, Chris Frost, Christine Gabella, Marc Gruber, Suranjith R. K. Hewamanna, Irma Hidayana, Janne J Jensen, Alan Kennedy, Alexandra Manning, Toby Mendel, Gregorio Salazar, Robert Shaw, Anne Louise Schelin, Akuat Supriyanto.

Special thanks to Belga Press Agency and Fairfax Photos for allowing the IFJ extensive use of their photograph libraries in the production of this report.

Design by: Louise Summerton, Gadfly Media

Cover photograph by: Dibyangshu Sarkar/AFP Photo.

No part of this publication may be reproduced in any form without the written permission of the publisher. The contents of this book are copyrighted and the rights to the use of contributions rest with the authors themselves.

I. INTRODUCTION

A journalist should never be jailed for doing his or her work. Yet, right now, journalists are languishing in jail simply for doing their job.

Time and time again, all over the world, journalists are being tried and sent to jail for defamation.

Criminal defamation is an affront to free speech. It has enormous personal impact on the accused journalist and silences him or her most effectively. If found guilty and given a custodial sentence, it deprives the journalist of their liberty, their income, their career. It puts a burden on their family and, by definition, brands the journalist a criminal.

It has a chilling effect on the journalists' peers and other media in the jurisdiction. It encourages self-censorship. It has the potential to infect an entire media community with fear.

All this because of one thing: words.

The International Federation of Journalists (IFJ), the global voice of journalists, representing more than 500,000 journalists in close to 120 countries, is committed to campaigning for the decriminalisation of defamation. The IFJ argues that jailing journalists for defamation is a wildly inappropriate – not to mention, ineffective – penalty. There are much better ways to remedy defamation, such as prominent and quick apologies.

A free press must be held accountable for its conduct but criminal defamation laws threaten the liberty of journalists and the fearless nature of a truly free press. Meanwhile, outrageous civil defamation damages suits threaten the economic viability of media organisations.

Laws have been implemented across the world that are essentially designed to prevent criticism of governments. Any truly democratic state cannot retain such laws. The United Nations Human Rights Commission (UNHRC) cites the use of criminal penalties for defamation as a key indicator of nations that largely reject the right to freedom of expression.

As a part of its campaign against defamation, the IFJ has produced this campaign resource on defeating criminal defamation and promoting appropriate alternatives. It focuses primarily on alternatives to defamation: how to deal with the problem of someone believing their reputation has been unjustly damaged by something published or broadcast in the media.

This report offers a summary of recent international defamation cases. These cases illustrate the ways in which

criminal codes across the world can be used to limit freedom of speech and prevent true freedom of expression. They also reveal the global nature of this issue.

The Indonesian case of *Tempo v Winata* has attracted worldwide attention over the Indonesian legislature's apparent reluctance to acknowledge the press's legally enshrined independence. A self-interested judiciary has totally disregarded the 1999 *Press Law* that guarantees press freedom. International condemnation is

helping to force the government's hand toward repealing the draconian insult laws that have already imprisoned many Indonesian journalists.

Two countries have recently moved to decriminalise defamation: Ghana, which decriminalised defamation in 2001, and Sri Lanka, which did the same in 2002. This report looks at the process that Sri Lankan and Ghanaian press-freedom advocates adopted to decriminalise defamation.

Most established democracies in North America and Western Europe rarely impose custodial sentences for defamation. But there is still much work to be done and, often, in some of the most progressive nations.

The IFJ is campaigning to decriminalise defamation and promote the use of reasonable civil remedies, which protect reputations while also ensuring protection of journalists' freedom of expression. Civil penalties, combined with improved journalistic training, the promotion of press councils plus prominent and quick apologies, offer a far more effective remedy to an aggrieved plaintiff.

Jail sentences, on the other hand, are an utterly disproportionate punishment.

This handbook provides journalists and their associations and unions with the resources necessary to have this antiquated and outdated crime struck off the statute books, country by country.

Christopher Warren
President, IFJ



Christopher Warren
President, IFJ

2. WHAT IS DEFAMATION? WHY DECRIMINALISE IT?

Defining defamation

Defamation, slander, libel, *desacato*, insult laws, civil or criminal defamation. What do they all mean? What's the difference?

Defamation is the legal term used for accusing a person of a precise fact that harms their reputation. The fact must be printed, broadcast, spoken or otherwise communicated to others or only one other.

Defamation laws exist to protect people against malicious and untrue stories about them. They aim to balance the right to freedom of expression and the need to protect people's reputations.

Defamation can either be:

Libel, which is a statement in a written or other form, or

Slander, which is a spoken statement or gesture.

A claim for defamation can be brought by:

- Any living person (some jurisdictions, however, recognise a reputation for dead people), or

- Any legal entity (for example, any entity that can sue and be sued).

However, it is important to note that the IFJ and press freedom NGOs strongly argue that corporations and public bodies should NOT have the right to sue: that defamation laws should ONLY protect the reputations of individuals. (See chapter on principles of a model defamation law on page 16.)

Desacato is the Spanish term for "disrespect" and *desacato* laws are laws that criminalise the insult to reputation of public officials ('insult laws').

Insult laws "make it a crime to offend the 'honour and dignity' of public officials, state offices and national institutions. There are no objective standards, and leaders themselves, often notoriously thin-skinned, determine in the first instance whether they feel 'insulted' or 'offended'." (World Press Freedom Committee, 2000: 5).

[Some definitions in this chapter have been drawn from Article 19's *Rights Vs Reputations* booklet.]

Civil or criminal defamation?

Many countries have made defamation a criminal offence.

Civil and criminal offences carry different penalties. Civil offences are settled by an award – usually a fine or financial compensation. Criminal offences carry fines and sentences, including imprisonment.

The trend in international law [indeed, around the world] is to regard defamation as a civil offence. Experience shows that civil law is adequate to protect reputations, while maintaining an open society and a free press. (Article 19, 2003: 4)

What is the problem with criminal defamation?

Laws that punish defamation exist to compensate for the harm to a person's reputation. That harm cannot be compensated by sending journalists to jail and criminal sanctions are an inappropriate response to the damage inflicted.

The ability to impose a custodial sentence has a chilling effect on the media and gives governments, business and political leaders a tool with which to threaten the media. It also encourages self-censorship by journalists and editors.

Press-freedom advocates say that all defamation should be dealt with in the civil realm and that organisations and public bodies should never be able to bring defamation actions.

What do the international conventions and courts say?

Criminal defamation has been widely condemned by international conventions and decisions. The common premise is that defamation should not be a criminal offence because jailing journalists has a chilling effect on free speech.

As a starting point, Article 19 of the *Universal Declaration of Human Rights* enshrines the right to free speech:

Everyone has the right to freedom of opinion and

Laws that punish defamation exist to compensate for the harm to a person's reputation. That harm cannot be compensated by sending journalists to jail ...

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.

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

This sentiment is mirrored in Article 10 of the *European Convention on Human Rights*, 1950 and Article 13 of the *American Convention on Human Rights*, 1969.

The European Court of Human Rights has on at least four occasions rejected states' attempts to punish with penal sanctions for defamation (WPFC, 2005: 7). The United Nations Human Rights Commission regards the use of criminal penalties in defamation cases as an indication of the restriction on freedom of expression (WPFC, 2005: 7). The Inter-American Court of Human Rights has recently found that defamation convictions in Paraguay and Costa Rica violated international law.

Article 19 (the press-freedom NGO) states:

All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those states which still have criminal defamation laws in place, to progressively implement this principle. (Article 19, 2000: 7)

Reporters Sans Frontières (Reporters Without Borders) states:

Criminal libel and defamation laws should be repealed and replaced, where necessary, with appropriate civil laws. (RSF, 2003)

The UN Special Rapporteur on Freedom of Opinion and Expression, the Organisation for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media and the Organisation of American States Special Rapporteur



Two activists hold newspapers in their mouth during a demonstration in Madras on 12 November 2003. They are part of a demonstration against the attempts by the state assembly of Tamil Nadu in southern India to have six journalists arrested for criticising the government. Photograph by Dibyangshu Sarkar/AFP Photo.

jointly declared in 2002:

Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. (United Nations, 2002)

On 28 February 2005, the Special Rapporteur for Freedom of Expression for the African Commission on Human and Peoples' Rights (ACHPR), Andrew Chigovera, and his Inter-American Court of Human Rights (IACHR) – Organisation of American States (OAS) counterpart, Eduardo Bertoni, issued a joint statement regarding criminal defamation:

In democratic societies, the activities of public officials must be open to public scrutiny. Criminal defamation laws intimidate individuals from exposing wrongdoing by public officials and such laws are therefore incompatible with freedom of expression. (OAS, 2005)

The OSCE representative on Freedom of the Media, Miklos Haraszti, said in a speech to the Fourth Winter Meeting of the OSCE Parliamentary Assembly on 25 February 2005, summarised the international opposition to criminal defamation. He said:

Based on Article 19 of the *Universal Declaration of Human Rights*, Article 10 of the *European Convention of*

“... criminal defamation laws are not acceptable in modern democracies. These laws threaten free speech and inhibit discussion of important public issues ...”

Miklos Haraszti, OSCE representative on Freedom of the Media

Human Rights and the constitutional principle of freedom of expression – the cornerstone of all modern democracies – the European Court of Human Rights, the US Supreme Court, the UN Rapporteur on Freedom of Opinion and Expression, the OAS Special Rapporteur on Freedom of Expression, the OSCE Representative on Freedom of the Media, constitutional and supreme courts of many countries, and respected international media NGOs have repeatedly stated that criminal defamation laws are not acceptable in modern democracies. These laws threaten free speech and inhibit discussion of important public issues by practically penalising political discourse.

The solution that all of them prefer and propose is to transfer the handling of libel and defamation from the criminal domain to the civil law domain. (OSCE, 2005)

He is right. Overwhelmingly, international opinion and standards call for the repeal of laws that jail journalists for defamation.

A word about civil penalties

While the IFJ is calling for defamation to be dealt with only in the civil realm, it is important to note that there are problems in this jurisdiction as well. Some plaintiffs have sought – and been granted – enormous damages claims in civil defamation suits. While this is better than depriving a journalist of his or her liberty, wildly inappropriate financial awards can have just as crippling an effect on press freedom as jail. Newspapers have closed down, journalists have lost their jobs, and the ‘offending’ news outlet has been just as effectively silenced.

The IFJ and other press-freedom groups have called on governments to review civil defamation laws to ensure that there is an appropriate and rational relationship between the relevant harm and the amount of damages that can be awarded. It is important that when moving from a criminal to civil jurisdiction for defamation, that the chilling impact on press freedom does not continue.

3. RECENT DEFAMATION CASES AROUND THE WORLD

Many countries are well on the way toward the abolition of criminal defamation but few have officially done so. Some that have repealed the law include Bulgaria, France, Ghana, Sri Lanka and Bosnia and Herzegovina.

While some Eastern European countries are amending their legislation in order to join the European Union, both Italy and Poland continue to jail journalists under their respective criminal codes. In the United States, despite its First Amendment enshrining freedom of speech and a Supreme Court decision limiting the constitutionality of criminal sanctions for defamation, 17 American states and two territories were still able to prosecute journalists under the penal code.

The following non-exhaustive list gives a snapshot of the global phenomenon of criminal defamation.

A global snapshot

Afghanistan

In 2004, the Afghan media continued to develop while the country and its government underwent reconstruction. Even though the draft constitution guaranteed press freedom, it retained prison sentences for some press offences. The blasphemy law remains the greatest threat to journalists. Two journalists were sentenced to death under this law in 2004. They subsequently fled the country.

Algeria

Mohammed Benchicou, past editor of the government-closed daily newspaper *Le Matin*, and four of his colleagues were convicted of criminal defamation in April 2005. They were accused of “offending the head of state” and “insulting the president of the republic”, and are facing prison sentences of up to one year. Benchicou is already serving a two-year jail term for violation of currency exchange, begun on 14 June 2004. Hafnaoui Ghoul, a journalist with *El Youm* and human rights activist, was detained on 24 May 2003 and later convicted for defamation. He was sentenced to serve six months with no parole.



Mohammed Benchicou, presents his book '*Bouteflika, the Algerian Impostor*' at a press conference in February 2004. He was recently found guilty on defamation charges and faces a possible jail sentence. Sale of the book is banned in Algeria. Benchicou was the editor of the daily newspaper *Le Matin*, which was shut down by the Algerian government. Photograph by Hocine Zaourar/AFP Photo.

Azerbaijan

Irada Huseynova, a journalist, had been charged with criminal defamation by the mayor of Baku for criticising his administration. The mayor officially dropped charges against Huseynova on 24 June 2004 after international pressure. Criminal defamation remains on the statute books with punishment of up to six months in prison. Slander against the head of state can be punished with up to two years in prison.

Bosnia and Herzegovina

Criminal offences against honour and reputation (Articles 213 through to 220 of the criminal code) were repealed on 1 November 2002. A new law, allowing for defamation to be dealt within the civil jurisdiction, has been enacted.

Chile

The Senate discussed a bill eliminating the country's insult (*desacato*) laws in January 2005. However, the insult laws remain, which are seen as unconstitutional, arbitrary and obsolete. Several organisations are pushing for the total abolition of these laws.

Columbia

Roberto Posada, a columnist for the *El Tiempo* newspaper, became the target of libel proceedings in August 2003 for allegedly defaming businessman Pedro Juan Moreno Villa. In his 3 March 2002 opinion column (a format normally immune to defamation claims) Posada voiced opposition to Moreno running for the vice-presidency as he was known to have connections to paramilitary groups. After receiving criticism from Moreno, Posada responded in his 7 March column, calling him “dangerous” and “a menace”. After being accused of libel, Posada published a voluntary apology on 22 June 2002 but, despite his efforts to restore Moreno's reputation, the prosecution continued to pursue him. It was not until June 2004 that Posada's appeal against the conviction was finally granted.

Congo

On 31 January 2005, José Wakadila, a journalist with the Kinshasa-based daily *La Référence Plus*, was imprisoned for defamation after being sentenced in absentia in September 2004. He was sentenced to four months in prison with no parole. According to the conviction, he defamed Guillaume Bolenga, the president of Cobil Oil's management committee. Fortunately, on 8 February 2005, Wakadila was granted a provisional release. Another *La Référence Plus* reporter, Deo Mulima Kampuku, was also sentenced in absentia on 4 January 2005 to four months' jail for criminal defamation. As of 11 February 2005, Kampuku remained in hiding.

Costa Rica

In a major decision for press freedom in Latin America, in August 2004 the Inter-American Court announced that the libel conviction of a Costa Rican journalist violated the regional bill of rights.

Mauricio Herrera, a reporter on the daily newspaper *La Nación*, was found guilty of criminal libel and ordered to pay about US\$200,000 in fines and damages after reporting allegations against a former Costa Rican diplomat implicated in a Belgian arms scandal.

The articles largely reported allegations earlier published by European media, but Costa Rican defamation laws require that third-party allegations must be proven. On appeal, the Inter-American Court threw out the conviction. They concluded that those who “enter the sphere of public discourse” must tolerate a greater “margin of openness to a broad debate on matters of public interest”. This, the Court added, was essential to the proper functioning of democracy.

Herrera's conviction was cleared and he received US\$10,000 in costs plus US\$20,000 in moral damages. This

ruling sets an important precedent in Latin America – a region traditionally plagued by press restrictions.

Czech Republic

After joining the European Union in 2004, the Czech Republic seems to have stalled the criminal prosecution of a journalist who exposed high-level corruption in 1999. But technically, as of October 2004, libel could still be prosecuted as a criminal offence, with a one-year prison sentence.

East Timor

The East Timorese Justice Ministry is currently drafting the young country's penal code which will have harsh penalties for criminal defamation. Under the draft, journalists found guilty of defamation face up to three years in jail and unspecified fines.

Egypt



Egyptian President Hosni Mubarak speaks at a press conference on 16 January 2005. A week later, Mubarak promised to reform Egypt's strict defamation laws, which currently hold two-year prison terms, but at this stage they remain in place. In 1999, Mubarak was voted one of the world's top enemies of press freedom by the Committee to Protect Journalists. Photograph by Mike Nelson/ EPA.

In May 1999, Egypt's President Hosni Mubarak was voted by the Committee to Protect Journalists as among the world's top 10 enemies of the press. Now, however, Mubarak says he is committed to the de-criminalisation of defamation. On 23 February 2005, Mubarak told the Egyptian Journalist Syndicate that he would push for the approval of reforms to abolish the two-year prison terms that are currently available for defamation offences. The result is pending.

Ethiopia

In 2004, the Ethiopian Free Journalists Association (EFJA) came under government attack. The EFJA is opposed to a proposed press law designed to hinder journalists. Reporters

are often arrested, convicted for criminal defamation and/or disseminating false information.

Gambia

On 13 December 2004, the Gambian parliament passed a law ensuring that all press offences are punishable by jail. Days later, a leading editor, Deyda Hydara of *The Point* newspaper in Banjul and a correspondent for AFP and Reporters Sans Frontières, was assassinated. Independent observers suggest that his death was a result of his public opposition to the new legislation.



Gambian newspaper editor and AFP correspondent Deyda Hydara was assassinated on 16 December 2004. He was a vocal opponent of new laws restricting press freedom, and it is thought that his murder was the result of this opposition. His death sparked several protests over press freedom and safety in surrounding West African nations. Photograph by RSF/EPA.

Ghana

On 27 July 2001, in an important act for press freedom in Africa, Ghana's parliament repealed its Criminal Libel and Seditious Laws. However, in a recent civil defamation case, an independent newspaper was ordered to pay US\$165,000 in civil damages to a minister of the government (see case study on Ghana at page 20).

India

In December 2003, *The Hindu* challenged the use of the criminal code for defamation in the Supreme Court, arguing that it violates the press freedom guaranteed by the Constitution. By 2004, three additional criminal libel actions were launched against *The Hindu*. Other publications are facing similar cases, including the *New Indian Express*, *India Today*, *Outlook* and *The Statesman* as well as Tamil dailies, *Dinamalar* and *Dinakaran*.

Indonesia

In 2004, editor of outspoken *Tempo* magazine, Bambang Harymurti, was sentenced to one year in prison for defaming businessman Tomy Winata. On 4 May 2005, *Koridor Tabloid* editor Darwin Ruslinur and journalist Budiono Saputro were sentenced to nine months in jail for defamation. (See case study on Indonesia at page 22.)

Italy

A broadcaster and print journalist from Trieste, Massimiliano Melilli, was sentenced to 18 months in jail without parole and fined €100,000 on 24 February 2004 on a criminal libel charge. His story, published in November 1994, covered rumours of erotic parties attended by Trieste high society. Without actually naming her, Melilli focused his story around the wife of the then mayor and now president of the Frioul-Vénétie region.

Ireland

The Irish legislature has sustained ongoing pressure to abolish criminal defamation laws. The current law, the *Defamation Act 1961*, is out of date and a reviewed defamation Bill is due to go before the Irish Parliament in late 2005.

Jordan

In late December 2004, a judge in Amman charged activist Ali Hattar with violating Article 191 of the Jordanian penal code, which prohibits “slander” of government officials. Hattar delivered a lecture entitled “Why We Boycott America” and was arrested shortly afterwards. Hattar is a member of the Anti-Normalisation Committee, a banned organisation that vehemently opposes the policies of the US and Israel. While Hattar had not been convicted as of 27 January 2005, he may face up to two years in prison.

Kazakhstan

Reporter Zhumat Anesula, in January 2005, became the subject of a libel and insult claim in the city court of Arkalyk. His article appeared in the national *Zhas Alash* newspaper on 28 October 2004 and criticised the city administration. The city head was pushing for a three-year jail term. On 16 February 2005 Anesula was fined 65,000 Tenge (US\$490).

Kenya

A criminal libel charge was dropped against investigative journalist Kamau Ngotho of *The Standard* in January 2005. Ngotho was pursued for his article of 8 January focusing on businessman John Macharia and was titled “Mr. Moneybags: big money games that run Kenya’s politics”. The story delved into the cronies directing the country’s leadership. The government has now declared the law obsolete. This decision sets an important precedent in Africa and across the world for the abolition of criminal libel.

Maldives

In 2002, the three founders, editors and writers for the Dhivehi-language internet publication *Sandhaanu* were arrested along with their secretary. All three were sentenced to life imprisonment (later reduced to 15 years) and one year of banishment for defamation. *Sandhaanu* regularly criticised the government for abuse of power and called for political reform. They were not allowed to file a defence. On 9 May 2005, one of the founders, Fatimath Nisreen, was released, while the other two founders remain under house arrest.

Morocco

Ali Lmrabet, a leading Moroccan journalist, was fined 50,000 dirhams (approximately US\$5600) and banned from journalism for 10 years on 12 April 2005 for allegedly defaming a little-known association based in the Western Sahara territory. The ban came 10 days before he was due to get a final permit for publication of a new magazine, after his earlier publication was banned. Lmrabet was jailed for three years in 2003 for insulting the king, but he received amnesty after a 42-day hunger strike that brought worldwide media attention.

Pakistan

The National Assembly approved the controversial *Defamation Bill* in August 2004 despite objections from the opposition. The new law is designed to protect public figures from slander through increased penalties, including prison terms of up to five years and a minimum fine of Rp100,000 (approximately US\$1700).

Paraguay

The recent overturning of a 1994 criminal libel conviction by the Inter-American Court of Human Rights suggests Paraguay is heading towards abolishing criminal

defamation. In 1992, presidential candidate Ricardo Canese questioned his rival, Juan Carlos Wasmosy, in the local press of being the front man in a business partnership with former dictator Alfredo Stroessner. Wasmosy became President and pursued defamation proceedings against Canese. In 1994, Canese was sentenced to four months in prison and fined US\$7500 for defamation. Following a series of failed appeals, Canese took the case to the Inter-American Commission on Human Rights.

In June 2002, the Commission asked the Inter-American Court to declare that Paraguay had violated international law by ignoring Canese’s right to freedom of thought and expression as guaranteed by the *American Convention of Human Rights*. Fearing the broad ramifications, the Paraguay Supreme Court dismissed the case against Canese in 2002. The Inter-American Court, however, continued with the case. On 14 September 2004, the Court ruled that not only the guilty finding, but also the matter of the prosecution violated Article 13 of the *American Convention on Human Rights*. The court ordered the state of Paraguay to pay Canese US\$35,000.

The Inter-American Court’s decision has long-reaching implications for press freedom in Latin America. The Court is an arm of the Organisation of American States (OAS) and its decision binds member nations. This case has set a valuable precedent for Central and South American countries to abolish criminal defamation provisions and builds on the August 2004 Costa Rica decision.

Peru

In May 2005 two British freelance journalists, Sally Bowen and Jane Holligan were found guilty of criminal defamation and ordered to pay NS10,000 Peruvian soles (around US \$3,000) to businessman Fernando Zevallos. They were also sentenced to one year probation, the conditions of which restrict travel in and outside of the country and bar the further practice of their “crime.”

In January 2005, Julio Jara Ladrón de Guevara, editor-in-chief of the Cuzco-based newspaper *El Comercio*, received a one-year suspended sentence for defamation. In addition, he was ordered to pay NS16,000 (approximately US\$4900) to the state and NS1000 (approximately US\$300) to the plaintiff, Rafael Córdova Paliza. The judge ruled that the newspaper had defamed Paliza by publishing a story alleging he had swindled a group of rural communities. An appeal is pending.

In addition, Peruvian journalists Feliciano Orchards and Cecilia Valenzuela has faced civil suits demanding disproportionately large compensation for reports about corruption and fraud by the President’s family and the judiciary. Such actions heavily restrict media freedom in Peru.

Philippines

On 29 March 2005, a Philippine radio commentator was ordered to be arrested following a criminal defamation suit in Davao, Southern Mindanao. The commentator, Frank Gupit, has been reported as saying he will continue to host his show from his prison cell.

Poland

On 25 January 2005, a Warsaw prosecutor requested that Jerzy Urban, editor of the magazine *Nie*, be sentenced to a ten-month suspended prison term for insulting Pope John Paul II in an “offensive” editorial. The court in Warsaw fined Urban €5000. This case follows the sentencing of two Polish



Jerzy Urban in court in Warsaw, Poland, on 18 January 2005. He faced court over an editorial in his magazine *Nie* in which he allegedly insulted Pope John Paul II. The prosecutor in this case requested a ten-month jail sentence, but Urban received a fine of €5000. This case was the latest in a series of criminal defamation cases in Poland. Photograph by Tomasz Gzell/EPA.

journalists to prison terms in May and July 2004 for slandering a public official. These were the first jail sentences imposed for criminal libel in democratic Poland.

Sierra Leone

In October 2004, Paul Kamara, the editor of the independent newspaper *For Di People* was prosecuted on two counts of “seditious libel” and sentenced to four years’ prison. The charges against Kamara concerned an article entitled “Kabbah a True Convict”. It repeated that the president was found guilty by a Commission formed to inquire into alleged fraud in the Sierra Leone Produce Marketing Board. Kamara is appealing the decision.

Slovakia

Slovakia is currently reviewing its criminal code, “although there still remains the option of a five-year prison term for defamation. While progress is being made, in December 2004 a massive payout was awarded to a Supreme Court Judge. The judge sued a journalist for imputing in the daily *Sme* that he was “partially responsible” for jailing a Catholic priest in a show trial during Slovakia’s communist era. The judge denies that the sentence he handed down in 1981 was a political act. The financial penalty is expected to cripple *Sme*.

Spain

The Spanish Supreme Court, on 18 June 2004, threw out an appeal by journalists José Luis Gutiérrez and Rosa María López, who were found to have insulted the now dead

Moroccan King Hassan II. On 13 December 1995, Gutierrez and Lopez published an article in *Diario 16* that a truck owned by the Moroccan Royal Crown and carrying 5 tons of hashish had been seized in the Spanish port of Algeciras. The headline, “Hassan II Family Enterprise Linked to Drug Trafficking”, was deemed to have insulted Hassan II despite the content of the article being accurate. The statute used was the *Protection of Honour, Privacy and Right to a Respectful Image Law* (1982). The European Court of Human Rights has stated that in such cases the defence of justification (*exceptio veritatis*) in publishing the material must be made available. This defence has been denied Gutierrez and Lopez who are still awaiting a decision.

Sri Lanka

In Sri Lanka it has been a continuous struggle to remove the criminal aspects of defamation law from the statutes, which were finally repealed in 2002. Prior to this criminal defamation was a penal offence and politicians frequently enacted these to control the press. Editor of the Sinhala newspaper and media activist Victor Ivan was convicted of criminal defamation on several occasions, but succeeded in appealing one of his cases to the United Nations Human Rights Committee (UNHRC), which set an important precedent for the review of Sri Lanka’s criminal code (see case study on Sri Lanka at page 24).

Thailand

Thai authorities are planning a criminal court case set to start in July 2005 against media reform activist Supinya



Thai press freedom activist Supinya Klangnarong gives an interview in Bangkok, 10 May 2005. She, and her colleagues at the *Thai Post* are facing criminal charges brought against her by a company owned by Thai Prime Minister Thaksin Shinawatra. Photograph by Saeed Khan/EPA.

Klangnarong and her colleagues at the *Thai Post*. Relatives of the Prime Minister, Thaksin Shinawatra, own the company Shin Corp which has pressed charges.

The Press Council of Thailand has held seminars on the country's defamation law and how it has been used against journalists trying to root out corruption. The latest seminar took place in January 2005 and was attended by political officials, media advocates and activists.

Togo

Togo abolished criminal sanctions for defamation and insult on 24 August 2004, following the establishment of a reform commission made up of members of civil society, including journalists' associations, to examine the laws.

Tunisia

Jailing journalists for defamation is routine in Tunisia. Zouhair Yahyaoui, the founder of the satirical website *TUNeZine*, was sentenced in June 2002 to two years in prison for "spreading false news", and was given conditional release on 18 November 2003. Hamadi Jebali is the publisher of the weekly paper *Al Fajr*, which is an organ of the banned An Nahda Islamic Movement. Jebali has served several jail sentences for "defamation", "encouraging violation of the law" and being "a member of an illegal organisation". He has been imprisoned since 1991. Abdallah Zouari, a journalist from the suspended Islamist weekly *Al-Fajr*, was sentenced

on 9 October 2003 to a total of 13 months in prison for defamation. He had one year earlier completed an 11-year sentence in jail for "belonging to an illegal organisation".

Turkey

The Turkish government plans to implement a new penal code on 1 June 2005 which will see increased criminal sentences for journalists found guilty of defamation and insult. Under the old law, journalists would be fined for publishing obscene material, but under the new code they could be jailed. The law was due to be implemented on 1 April but has been postponed.

Ukraine

The only independent national broadcaster, Kanal 5, has had its bank accounts frozen following a decision of the Pecherikiy District Court in Kiev in late 2004. Earlier that year, Kanal 5's licence to broadcast in Kiev was suspended and the station could be prevented from broadcasting in the capital. The court decision followed a defamation case brought by parliamentarian Volodymyr Sivkovitch against one of Kanal 5's owners, opposition politician Petro Porochenko.

United States

Criminal libel remains on the books of 17 states in the United States. In July 2002, David Carson and Edward H Powers Jr, who published and edited the Kansas-based *The New Observer*, were convicted of criminal defamation for publishing rumours that the mayor and her husband, a judge, did not, as required by law, reside in the county where the mayor held office. The journalists were apparently incorrect in saying that the mayor and her husband lived at a certain address in the neighbouring county, despite many reports that they did have a house somewhere in the area. *The New Observer* published a brief apology for the error but the action was pursued regardless. The journalists were fined and given a suspended sentence.

Venezuela

In March 2005, the Venezuelan Legislative Assembly accepted a "partial reform" of the national penal code. Unfortunately, the new Venezuelan code is clear in its goal to protect political leaders and make them immune to

Unfortunately, the new Venezuelan penal code is clear in its goal to "protect political leaders and make them immune to criticism".

criticism. Prison terms for those convicted of criminal libel have been increased from an old maximum of 18 months to up to four years. Prison terms for "protection of honour" have also increased, from a maximum of eight days in the earlier code to up to one year in the new code.

Yemen

Abdulkarim Sabra, editor of the private weekly *Al-Hurriya* (*The Freedom*), and reporter Abdulqawi al-Qabati were each sentenced to two years in prison in the country's capital Sana'a on 29 December 2004. According to the charges, they had insulted the President of Yemen in an article critical of Arab leaders on 13 October 2004. *Al-Hurriya* has also been banned for up to a year. In March 2005, the President of Yemen pardoned Abdelkarim al-Khaiwani, editor of the opposition weekly *Al-Shoura*, after he had served seven months in prison for "publishing false news".

4. STAYING OUT OF THE COURTROOM

As is made clear throughout Indonesia's *Press Law 40/1999*, there are various alternatives to legal action where defamation is concerned. These include prominent apologies, quick corrections, in-house systems to deal with complaints and voluntary or statutory press councils.

It is these non-legal avenues which offer the best remedy to plaintiffs' perceived damage.

Litigation ... can attract further publicity to the contested imputation, effectively 're-defaming' the plaintiff.

Litigation, on the other hand, can attract further publicity to the contested imputation, effectively 're-defaming' the plaintiff. This issue is overlooked by many plaintiffs, who are less interested in restoring their reputation than they are obsessed with punishing and gagging an independent press.

International pressure can help encourage countries like

Indonesia, Tunisia, Italy and others to respect the proper functions of both the media and defamation law. Publicity of the *Tempo* case has made President Yudhoyono and other leaders around the world well aware that now is the time to decriminalise defamation.

The people in countries which are moving toward repealing the penal code for defamation, need to be made aware of the alternatives to legal action. With increased awareness of the civil or non-legal remedies available, the general public can ensure ethical journalism by complaining about possibly defamatory content. But crucially, as seen in Ghana, a public that is vigilant of government and/or elite attempts to criminalise journalists may be the most effective safeguard against the erosion of press freedoms.

The alternatives to legal redress for defamation, including press ombudsmen, quick corrections and prominent apologies, press councils and codes of ethics are outlined here.

5. IN-HOUSE SYSTEMS: PRESS OMBUDSMEN, QUICK CORRECTIONS AND PROMINENT APOLOGIES

Many European and American media outlets have established their own in-house ombudsman to handle audience complaints and organise a response from the relevant journalist.

This has been done to increase the quality of journalism and ensure transparency in the newsroom, thereby improving public trust in that particular outlet's content and conduct.

One example is the editor of the readers (ER) at the Danish newspaper *Politiken*. This daily broadsheet introduced an ombudsman in the late 1990s to deal with audience comments and complaints. Currently, Niels Noergaard holds the position, which is independent of the editor-in-chief.

Since the introduction of the editor of the readers [an in-house ombudsman], *Politiken* has increased its credibility with its readership and in the general population as well.

His function is to represent the readers in the newsroom and make sure that all inquiries from readers are investigated and answered. The ER has a duty to correct errors and clarify misunderstandings found by the reader, the staff or the ER. This happens in the daily column "Errors and mistakes", and in a weekly column the ER has an in-depth analysis of a subject that has generated most discussion in the newsroom or among the readership.

The independence of the ER ensures that the daily corrections and the weekly column are printed without interference from any member of staff. Even though the editor-in-chief is not obliged to follow the criticism from the ER regarding editorial decisions, there is an attempt to do so. The individual names of reporters are not mentioned in

this paper's daily column since every article is regarded as a product of a team. In some other publications, the ombudsman effectively mediates between the reader and the journalist concerned, arranging for each side to submit their view on the matter which is then published.

Since the introduction of the ER, *Politiken* has increased its credibility with its readership and in the general population as well. Due to the procedures performed by the ER, complainants are guaranteed to get a correction or apology if the newspaper has made an error. This has reduced the number of complaints going to the Danish Press Council. It has also highlighted the errors of the journalists, including misspelling of names and places, and inaccuracies in financial reporting.

Politiken's sister paper, a tabloid named *Ekstra Bladet*, has not established an ombudsman, nor are there any plans to do so. The newspaper has, however, changed its practice regarding the publication of the Danish Press Council proceedings.

Until a few years ago, the paper only printed the statements from the Press Council if the complainant was right. Now, they print every case regarding the newspaper to ensure that the readers are aware of the large number of decisions which favour the newspaper and its frequently criticised editorial positions.

This monitoring role is important for, if nothing else, increasing audience awareness that its comments are being acknowledged. A similar arrangement could, over time, improve the image of media outlets in countries where press freedoms are relatively new. An improved public image would make it more difficult for elite figures with the resources to pursue legal action to do so, as it would provoke public criticism.

Quick corrections and prominent apologies



Alan Kennedy

By Alan Kennedy, journalist, *The Sydney Morning Herald* (Australia)

For the past few years, *The Sydney Morning Herald* and *The Sun-Herald* have operated ReaderLink with the aim of quickly correcting errors in the newspaper. Although it has been operating for only a few years, the newspapers believe it has cut down the number of lawsuits which can often take years to resolve.

The response from readers is good. In the past, their frustration in getting someone to take their complaint seriously led to lengthy disputes that took up many hours of

people's time and often ended with the aggrieved party still feeling aggrieved.

Now the feedback is that they feel their complaint is handled by a senior member of staff and often an error is

Although ReaderLink has been operating for only a few years, the newspapers believe it has cut down the number of lawsuits ...

corrected in the newspaper the next day. Of course, not everyone is happy with the result.

How it works is best explained by the following, which is the notice that appears on the newspapers' intranet site and is a guide to journalists on how they should respond to queries from ReaderLink.

Unruffled by ReaderLink

ReaderLink fields inquiries, complaints and comments about editorial content in *The Sydney Morning Herald* and *The Sun-Herald*. It is designed to give readers and users of our newspapers a consistent and professional response to queries. It also provides the community with an easy, effective way to connect with the *Herald* and to improve our credibility among readers.

All contacts from the public – whether by phone, email, fax or letter – are logged. An essential part of ReaderLink's goal is to put a human face (or voice) on a large organisation. Readers should feel that they are welcome to call and that their opinion and information will be heard.

If a matter can be resolved by the ReaderLink team, the call is handled without disruption to editorial work. Otherwise staff are consulted before a response is given. Where a call concerns a complaint, relevant staff are consulted before a response is provided.

When ReaderLink needs to ask you [the journalist] a question or inform you of a reader's opinion, you will receive an email. You have the opportunity to reply. The more information you give ReaderLink, the better we can serve our audience.

A sample ReaderLink email is shown below:

The Sydney Morning Herald

A reader's Inquiry has been received by ReaderLink. It is about the section published 03/01/2004 in *The Sydney Morning Herald*.

The headline was Top Books

The reader, Thomas Doubting, said: "Why is 'The Bible' in the non-fiction list?"

If you can provide any information to help the reader, please respond.

If you require more information, call ReaderLink on x1569.

Many thanks,

Nerida, Penny & Josh

ReaderLink

Reference number 00024558

Whether staff input is required or not, once a response is available, the caller is contacted.

If a correction is required, it must be approved by a senior editor before publication. *Herald* editorial policy states that corrections should appear as soon as possible after the original article. ReaderLink provides a means of insuring these error reports are not lost or overlooked. Staff as well as readers will be able to use the system to track error calls and to record their outcome.

6. PRESS COUNCILS

Many of the IFJ's affiliates already have either press councils regulated by government legislation or as self-regulatory bodies.

Press councils are not a cure-all for defamation claims. However, taken as part of a suite of responses, they provide a valuable alternative to the courts for aggrieved plaintiffs. The following outlines two alternatives for national press councils. The first is the Danish Press Council, a statutory body, which is mandated by legislation. The second is the Press Complaints Commission of the UK, which is a voluntary body. Each has its strengths and weaknesses.

Further information on press councils (including the statutes and structure of many independent press councils) can be found at: http://www.presscouncils.org/aipce_index.php

The Danish Press Council



Anne Louise Schelin

By Anne Louise Schelin, Chief Legal Adviser,
Danish Union of Journalists

The statutory press council was introduced in 1991 in connection with the adoption of the new *Media Law*, which was a revision of the *Press Law* from 1936. Contrary to the old *Press Law*, the new *Media Law* also covers the electronic mass media (radio and television and – to some extent – internet media).

Before 1991, there had existed only a voluntary press council for print media and only for the print media who voluntarily signed up. The members of the council did not include journalists and the Danish Union of Journalists did not support the council or its guidelines for good press conduct. The journalists had through the years insisted that two important clauses must be added to the guidelines:

1. That it is against good press conduct to order a journalist to write (or do) anything that is against his or her own convictions or violates the guidelines for good press conduct;
2. That it should be a violation of good press conduct for the media to suppress information because of pressure from outside interests.

The journalists had also insisted that there should be parity in the representation of journalists and editors in the press council.

The fact that the voluntary press council covered such a small section of the mass media, and that its members were not representative of the interests in play, meant that it did not fill its role in society in a satisfactory manner. In the course of the preparations for the new *Media Law*, journalists and editors agreed on an updated version of the guidelines, including the two clauses mentioned above, and the question of equal representation was also settled.

Journalists and editors were wary of the statutory nature of the new Danish Press Council but accepted the solution because the guidelines themselves are not part of the law and still remain a document for the parties of the press to agree on. It is also absolutely clear that there can be no interference in Press Council decisions from public

authorities or government or the courts. Only the formal procedures of the case handling of the Council may become subject to court control. Journalists and editors agreed that a Press Council covering all mass media, and with a representation that balances the interests of the press and the interests of the public, would create better public support of the freedom of the press.

The authority of the Danish Press Council

The *Media Liability Act* holds a general clause that says the contents and the conduct of the mass media must be in compliance with good press conduct. The Act does not specify what good press conduct is, but the guidelines of good press conduct as agreed upon by the journalists and editors were enclosed as an appendix when the Act was adopted in parliament. The guidelines are presupposed to be the basis for the decisions of the Council.

Persons or companies who have been the subject of press coverage can complain to the Press Council if they find that the content or behaviour of the press has been in breach of good press conduct. As well, a person or a company who has been denied a reply by a media outlet can complain to the Press Council. If the Council finds that the request for a reply regards information of a factual nature, which is apt to cause economic or other substantial damage, it must grant the reply unless the information published by the media in question was undoubtedly correct.

The sanctions of the Press Council

The Press Council can issue a decision in which it criticises the media (in various degrees) and orders the media to publish the decision in a manner appropriate to the way the original press coverage took place. The same goes for a reply. If the media do not comply with the decisions of the Press Council they can be fined.

The function of the Press Council

The Press Council consists of a chair and a vice chair and six other members. The chair and the vice chair must be jurists and are appointed by recommendation of the president of the Danish High Court of Justice. Two other members are appointed by recommendation of the Danish Union of Journalists. Two members are appointed by recommendation from the editorial leadership of the newspapers, magazines, radio and television companies. Two members are appointed to represent the public by recommendation of the Danish Council for Adult Education¹. A substitute member is appointed for each of the eight members in accordance with the same procedure as described above.

Does the Press Council function well and is it respected?

From 1992 until 2003, the council has handled 1627 cases. Dissentions have only occurred in 40 of these cases. If you analyse the year 2000, which was the year between 1992 and 2003 where there were the most dissentions (in 10 out of 143 cases), you will see that five of these 10 dissentions were expressed by the editor, two by the jurist, one by the

¹ Danish Council for Adult Education is a non-profit association for the liberal adult education organisations and other associations within the 'Folkeoplysning' (Enlightenment of the public). The Council distributes government grants to study associations and folk high schools and follows up and evaluates the activities. The Council also surveys liberal adult education's policy and coordinates international contacts. The Council has 38 adult education organisations and other associations as members. The council is financed by member fees, government grants and 'Dansk tipstjeneste' (pool betting). International cooperation: Nordic – Baltic Network of National Councils for Adult Educations, European Association for the Education of Adults, EAEA, International Council for Adult Education, ICAE

journalist and editor in common, one by the editor and a representative from the public in common, and one from a representative for the public (who was only partly in disagreement with the majority). This shows a picture of a Press Council which, as an overall rule, reaches unanimous decisions.

In general, journalists and editors have respect for the decisions of the Press Council. There have been public debates from time to time and a few proposals to change the *Media Liability Act* in order to clarify the rules. Both the debates and the proposals have resolved that the present system works and that it generally has the backing of both the public and the press.

The Press Complaints Commission (UK)



By Professor Chris Frost, Head of Journalism, Liverpool John Moores University and chair National Union of Journalists (NUJ) Ethics Committee

The Press Complaints Commission (PCC) was set up to solely resolve complaints. It started work in January 1991 under the leadership of Lord MacGregor of Durrus, who had chaired the 1977 Royal Commission on the Press and was chairman of the

Advertising Standards Authority. The chair is now Sir Christopher Meyer.

The PCC's code of practice is drawn up by a committee of editors.

It runs a hotline to allow people to ring for urgent action or advice. The PCC chair is appointed by the Press Standards Board of Finance (Pressbof). It was decided that there should be 16 members of the Commission and that the press members should be working editors or senior journalists in executive positions. An appointments committee chooses the members of the council. This is chaired by the council chairman and has five members.

The PCC does not normally initiate inquiries.

How the PCC works

The PCC is a lay committee, with a small professional secretariat to service it.

As well as dealing with complaints, the PCC also does a fair amount of work advising editors before publication. More and more editors seek the advice of the PCC on a particular story or the approach to a particular story, according to Lord Wakeham who took over as chairman of the PCC in January 1995.

The PCC also says it has an important role to play in providing material on self-regulation and the code of practice for trainee journalists and students. In its annual report of 1995, it states that the PCC chairman, members and staff lecture extensively to universities, colleges and in-house training schemes across the country. Certainly the administration staff have always been very helpful in providing me with the material I needed for teaching and research.

The PCC also offers general guidance to editors.

The Commission also attempts to raise the awareness of the public with regional tours by the chairman; wide distribution of the *How to Complain* leaflet; advertisements in newspapers and magazines using space donated by the publishers; a touring exhibition; participating in conferences; and distribution of literature.

How to complain

The PCC issues a leaflet to help show would-be complainants how the system works.

A complaint should be sent to the Commission, where a decision is taken on whether the matter is one that presents a possible breach of the code of conduct.

It is here that the importance of the code becomes clear. Only if the code is potentially breached can a complaint be considered.

The editor of the publication is then sent a copy of the complaint and it is suggested that he or she deals with it directly. This can often be done with a correction, some form of right of reply or an apology. If the matter is resolved to everyone's satisfaction at this stage, the PCC would not normally pursue it further. If the situation is not resolved, the Commission would go on to adjudicate formally on the complaint. If the complaint is upheld, the publication is obliged to print the full text of the adjudication. If the complaint is dismissed, then no further action is taken. In both cases, the complainant is sent full copies of the adjudication.

The PCC attempts to deal with complaints as quickly as possible. It will normally only deal with complaints made within one month of publication or within one month of a reply from an editor to whom a complaint had been made. It will also not normally deal with third-party complaints, that is, complaints made by someone not directly involved in the complained-of story. They will approach the person in the story if they do decide to follow up a third-party complaint to seek their cooperation. They will usually drop the proceedings if that person does not wish to become involved.

If the complaint is about a story that involves litigation, then the PCC will normally wait until proceedings are over before continuing with the complaint.

Complaints

The PCC received 3500 complaints in 2003. It adjudicated on 23 of these, upholding 11.

Third-party complaints

The PCC is only obliged to consider complaints from those directly affected. However, the Commission may decide to consider a complaint from a third party. They would do so normally only when the issue was of one of some public interest. Because of the way the PCC looks at complaints, the decision on whether it is a third-party complaint is not taken until it is decided whether there is a *prima facie* breach of the code.

The Commission prints copies of all its adjudications in a regular report. These used to be monthly but in the last couple of years have been produced every two or even three months.

National Union of Journalists of UK and Ireland (NUJ)'s view of PCC

The NUJ would like to replace the PCC, accusing it of being a public relations tool of the newspaper industry – a body that editors and proprietors can hide behind while they continue to lower standards of journalism.

A House of Commons select committee recommended a number of changes in 2003, some of which were taken seriously by the PCC. The NUJ particularly asked for the right to a conscience clause – the right for journalists to refuse an assignment that went against their ethics without risking their careers.

Self-regulation is generally not seen to be working in the UK, except by editors and those directly involved with the PCC.

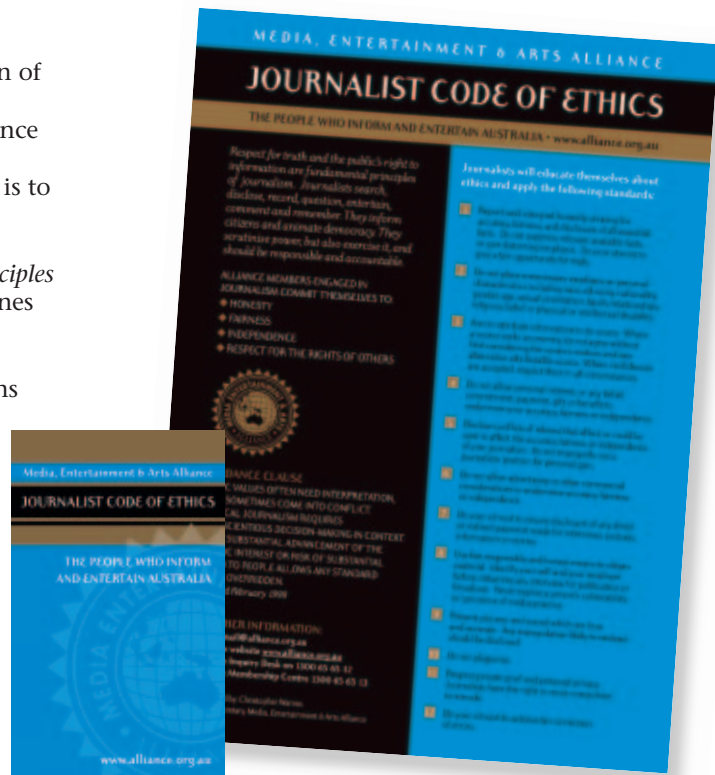
7. CODES OF ETHICS

Unethical conduct has seriously tarnished the profession of journalism in many countries and this lends weight to plaintiffs who seek to exploit a general antipathy to silence the press.

The first step toward eradicating criminal defamation is to enhance the standard of journalism by providing a professional code of ethics. The IFJ and its affiliates in almost 120 countries have signed the *Declaration of Principles on the Conduct of Journalists*, which sets out nine guidelines to all journalists.

This ethical code should underpin all training that journalists undergo to ensure that the profession remains accountable and safe from undue legal and/or government interference.

Besides these general rules, many affiliates have implemented their own ethical guidelines for journalists. The resource list in the appendix provides links to some of our affiliates' websites where codes of conducts are described. A good starting point is the International Journalists' Network, which lists codes of ethics from news organisations and journalists' unions from all over the world http://www.ijn.net.org/FE_Article/CodeEthicsList.asp?UILang=1, as does Independent Press Councils at http://www.presscouncils.org/aipce_index.php



IFJ Declaration of Principles on the Conduct of Journalists

This international declaration is proclaimed as a standard of professional conduct for journalists engaged in gathering, transmitting, disseminating and commenting on news and information in describing events.

1. Respect for truth and for the right of the public to truth is the first duty of the journalist.
2. In pursuance of this duty, the journalist shall at all times defend the principles of freedom in the honest collection and publication of news, and of the right of fair comment and criticism.
3. The journalist shall report only in accordance with facts of which he/she knows the origin. The journalist shall not suppress essential information or falsify documents.
4. The journalist shall use only fair methods to obtain news, photographs and documents.
5. The journalist shall do the utmost to rectify any published information which is found to be harmfully inaccurate.
6. The journalist shall observe professional secrecy

regarding the source of information obtained in confidence.

7. The journalist shall be aware of the danger of discrimination being furthered by the media, and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins.
8. The journalist shall regard as grave professional offences the following: plagiarism; malicious misrepresentation; calumny, slander, libel, unfounded accusations; acceptance of a bribe in any form in consideration of either publication or suppression.
9. Journalists worthy of the name shall deem it their duty to observe faithfully the principles stated above. Within the general law of each country the journalist shall recognise in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others.

Adopted by 1954 World Congress of the IFJ. Amended by the 1986 World Congress

8. PRINCIPLES OF A MODEL DEFAMATION LAW



What elements does a model defamation law have?

Article 19, the press-freedom NGO, has prepared a set of standards that should be adhered to when drafting a model law for defamation, a summary of which is reproduced here. The full Article 19 document, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*, can be found at www.article19.org. The IFJ supports these principles and believes they should form the basis of any change to existing national defamation laws.

There are many examples of laws that are promoted as good defamation laws by some, but very few examples of laws promoted by most as a model law. This shows that it is not easy to tread the fine line between balancing the competing interests of the right to protect a person's reputation and the right to freedom of speech.

For example, the *Uniform Correction or Clarification of Defamation Act* from the United States was drafted by the National Conference for Commissioners on Uniform State Laws in 1993. The Act, provides strong incentives to seek timely corrections without resorting to legal avenues, has received widespread support but has only been adopted by one US state, North Dakota.

On the negative side, the Act does allow corporations to sue, but not government bodies. The Act can be found at www.law.upenn.edu/bll/ulc/fnact99/1990s/uccda93.pdf.

The *Law of Georgia on Freedom of Speech and Expression* is another example of a good defamation law. It provides broadly for freedom of speech and opinion, only limiting them in exceptional cases such as when it is necessary to prevent discrimination, ensure a democratic society or is otherwise for legitimate reasons. Truth is a complete defense under the law, and it also absolutely protects the confidentiality of sources, allowing the journalist to refuse disclosure even in defamation proceedings before the court. The law can be found at <http://www.ifj-asia.org/page/defamation.html>

Example law criminalising defamation

The following, from the Swiss penal code, is an example of a law criminalising defamation. It's important to note that in this case, the defence of truth is acknowledged.

1. Offences of honour

Art. 173 – Defamation

1. The person who, addressing to another person, has accused someone or suspected someone of behaviour contrary to its honour or of any other fact that harms his/her reputation, The person who propagated such an accusation or such a suspicion, will, following a complaint, be punished by a maximum of six months of jail or by a fine.
2. The accused person will not be condemned if he/she proves that the allegations that he/she propagated are in conformity with the truth or that he/she had good reasons to think in good faith that they were true.
3. The accused person will not be allowed to provide this evidence and he/she will be able to be condemned if the allegations were articulated or propagated without regard to public interest or without sufficient reason, mainly with the aim of saying bad things about other people in particular relating to private life or family life.
4. If the author recognises that his/her allegations are false and decides to withdraw them, the judge can reduce the penalty or exempt the delinquent from any penalty.
5. If the accused person did not provide the evidence of the truth of the allegations, or if these allegations were contrary to the truth, or if the accused person did withdraw them, the judge will establish it in the judgment or in another written act.

Principles on freedom of expression and protection of reputation (a simplified version)

Principle 1: Freedom of opinion, expression and information

Everyone has the right to freedom of expression. This right may be restricted to protect a person's reputation. Any restriction on free expression must be prescribed by law.

Restricting free expression, including to protect the reputations of others, can only be justified if it can be proven to be necessary in a democratic society.

Principle 2: Legitimate purpose of defamation laws

Defamation laws cannot be justified unless they aim to protect the reputations of individuals.

Principle 3: Defamation of public bodies

Public bodies of all kinds should be prohibited altogether from bringing defamation actions.

Principle 4: Criminal defamation

All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.

Principle 5: Procedure

An individual should only be able to sue for defamation within one year of the date of publication.

Principle 6: Protection of sources

Journalists and media workers have the right not to disclose the identity of their confidential sources. Under no circumstances should this right be overturned in a defamation case.

Principle 7: Proof of truth

In all cases, if a statement is true, its author should not be held answerable for defamation.

Principle 8: Public officials

Under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status.

Principle 9: Reasonable publication

Even where a statement of fact on a matter of public concern has been shown to be false, defendants should benefit from the defence of reasonable publication, if the statement was made in the public interest, with due diligence and in good faith.

Principle 10: Expressions of opinion

Nobody should be sued for publishing an opinion.

Principle 11: Exemptions from liability

Certain types of statements, such as those made in the course of legislative, judicial proceedings and quoted accurately from them, should never be punishable under defamation law.

Principle 12: Scope of liability

No-one should be sued for a statement of which they were not the author, editor or publisher and did not know, and had no reason to believe that the statement was false.

Principle 13: Role of remedies (reparations)

The amount of any reparation awarded for defamation should be decided on the merits of each case.

Principle 14: Non-pecuniary remedies (non-monetary reparations)

Courts should try to use non-financial remedies before awarding financial damages.

Principle 15: Pecuniary awards (monetary)

Courts should award financial damages only where other forms of award are inadequate.

Principle 16: Interim injunctions (interim orders)

In the context of a defamation action, courts should not issue a ban prior to publication except in highly exceptional cases (when permanent harm would be caused by the statement or if the statement is unarguably defamatory).

Principle 17: Permanent injunctions (permanent orders)

Permanent orders should only be imposed by courts, and after a full and fair hearing of the merits of the case; their scope should be limited to the defamatory statement.

Principle 18: Costs

In awarding costs, courts should consider carefully the potential effect of the award on freedom of expression.

Principle 19: Malicious plaintiffs (malicious complainants)

Defendants should benefit from effective protection against malicious charges of defamation, especially where the intention is to stifle freedom of speech rather than defend a reputation.

Courtesy Article 19

9. CASE STUDY: VICTORY OVER CRIMINAL LIBEL IN GHANA



Bright Kwame Blewu

By Bright Kwame Blewu, General Secretary of the Ghana Journalists' Association and director of the Ghana International Press Centre

The Ghana Journalists' Association (GJA), founded on 15 August 1949, has served as a bulwark against anti-press activities. By its aims and objectives, the Association is a strong opponent of Criminal Libel and Seditious Laws.

The media endured bitter experiences under nine years of military rule by the Provisional National Defence Council (PNDC) headed by Flight-Lieutenant Jerry John Rawlings, who came to power in a coup on 31 December 1981. During the PNDC years, *The Newspaper Licensing Law Decree* effectively imposed a culture of silence on the media. Journalists considered to be hostile to the PNDC were simply denied a licence to publish a newspaper.

During this period, the late George Naykene, then editor of the *Christian Chronicle*, was jailed for 18 months for his story headlined "All PNDC Members Took Bribe". The story alleged that all members of the military junta, including Rawlings, benefited from a loan offered to them as prize money for handing over to an elected civilian government.

In 1992, Ghana returned to civilian rule and multiparty democracy. However Rawlings retained power as President in the new republic, being elected to two consecutive four-year terms.

But democracy brought with it a new Constitution and, using it for backing, the Ghana Journalists' Association mounted a campaign against the Criminal Libel and Seditious Laws. They argued the laws were not in consonance with the spirit and letter of the new Constitution, and kept pressure on the new National Democratic Congress (NDC) government of Rawlings.

The Ghana Constitution has a whole chapter – Chapter 12 – called "Freedom and Independence of the Media", and guarantees freedom of expression and media independence. This provided a basis for the GJA to question the validity of the Criminal Libel and Seditious Laws on the statute books of Ghana. Chapter 12, Act. 162 (2) of the Constitution states unequivocally that "subject to this Constitution and any other law not inconsistent with this Constitution, there shall be no censorship in Ghana."

"There shall be no impediments to the establishment of private press or media; and in particular, there shall be no law requiring any person to obtain a licence as a prerequisite to the establishment or operation of a newspaper, journal or other media for mass communication or information."

The GJA became even more concerned when the NDC government in early 2000 systematically employed the libel laws to harass and browbeat media practitioners. Three prominent journalists – Tommy Thompson, Kofi Coomson and Eben Quarcoo – were prosecuted for stories critical of the leadership of the NDC government. After the arrest in Geneva, Switzerland, of Ghanaian diplomat Frank Benneh for dealing in drugs, they alleged in news reports that Ghana's first lady, Nana Konadu Agyeman Rawlings, was also a drug dealer.

Gathering support against the libel laws

Alarmed by these developments, the GJA held various workshops at which media practitioners interacted with various stakeholders, such as parliamentarians and members of the Bench, and debated the merits and demerits of these laws. The GJA also used events such as World Press Freedom Day celebrations and its annual award ceremonies to attack the laws, raise public awareness and to lobby potential civil society groups. Soon, major allied institutions such as the National Media Commission and the Private Newspapers Publishers Association of Ghana lent their moral support. So too did professional bodies and civil society groups like the Ghana Bar Association and the Trade Union Congress (TUC).



The repeal of these obnoxious laws has breathed new life into Ghana's democracy, promoting a freedom of speech unprecedented in Ghana's history.

The support of other civil society and professional groups had by 1998 made the persistent calls for the abolition of these obnoxious laws by the GJA a national obsession. There were soon signals from the majority opposition New Patriotic Party (NPP) that it was willing to repeal the laws. In 1999, the Party's spokesman for Communications in Parliament, Papa Owusu Ankomah, told the house that "the need to review the laws was pressing and urgent".

The Ghanaian media placed the issue of "to repeal or not to repeal the Criminal Libel and Seditious Laws" firmly on the electioneering campaign agenda for the 2000 election. The timing was favourable. While the ruling NDC turned down the request, the opposition NPP promised to abolish the laws. The NPP eventually won the election and at a meeting with journalists on 13 January 2001, at Ada, east of the capital Accra, the then newly elected President Kufuor again promised to repeal the law.

The Amendment Bill which was signed into law by President Kufuor on 17 August 2001 repealed Chapter 7 of Part II of the *Ghana Criminal Code 1960* (Act 29) which deals generally with criminal libel. It also repealed Section 184, which gives the President power to ban organisations at his discretion. It also repealed Section 183 which provides for the offence of sedition; Section 183A that deals specifically with defamation of the President and, finally, Section 185, which criminalises communication in whatever form to any other person of a false statement or report likely to injure the credit or reputation of Ghana.

The challenges of free speech

The repeal of these obnoxious laws has breathed new life into Ghana's democracy, promoting a freedom of speech unprecedented in Ghana's history. Radio, in particular, has enjoyed the benefit. There are more than 50 radio stations



Ghana's President, John Kufuor, was elected in 2000. During its term Kufuor's government has repealed criminal defamation laws and the press now enjoy greater freedom to report and hold the government accountable. Photograph by Issouf Sanogo/AFP Photo.

Journalists are now free to hold the government more accountable to the people.

in Ghana today and through their phone-in programs, people now comment regularly on issues that affect their daily lives. However, some callers tend to be uncivil, sometimes insulting and provocative. Sometimes presenters/journalists have themselves been guilty. It is an issue which the GJA and other stakeholders in the media industry are working hard to minimise if not to eliminate all together.

Journalists are now free to hold the government more accountable to the people. The media has more courage to pursue probity and accountability, so helping to fight official corruption. However, it must be said that this new freedom has led to some gravely irresponsible journalism. Some complainants have filed civil libel suits that have resulted in a number of media houses suffering huge fines, in some cases more than a billion cedis (US\$100,000).

Although aggrieved persons have a right to a rejoinder both under the Constitution and the GJA Code of Ethics, increasingly, people are turning to the courts to seek redress. They also appear to be shunning the National Media Commission and the GJA Ethics Committee processes of arbitration, which lay emphasis on amicable settlements.

Conclusion

Without a courageous media determined to carry out a relentless campaign, the support from civil society and the goodwill and sympathy of the general public, the repeal of criminal defamation laws would have remained just a dream. It must also be noted that a strong journalists' association, which is well organised and has a leadership committed to this goal, is a necessary requirement in any struggle of this nature, particularly in Africa, which can many a time be rough and dreary.

10. CASE STUDY: TEMPO v WINATA IN INDONESIA

The fall of Indonesian dictator Suharto and the passing of the new *Press Law* in 1999 raised hopes for democracy and increased press freedom in Indonesia. While there is less overt state intervention in the media post-Suharto, remnants of the regime linger and have developed more covert, but equally effective, means of keeping the fourth estate in line.

No less than 49 articles of the penal code curtail freedom of speech. Some observers argue that particular judges have vested interests in restricting press freedom. For whatever reason, it is often these 49 articles, instead of the more liberal *Press Law*, which are invoked to charge Indonesian journalists with press misdemeanors.

This has been exhibited most clearly in the recent case involving the prestigious weekly *Tempo*, whose editor, Bambang Harymurti, was deemed legally responsible for *Tempo's* content on 16 September 2004. He was sentenced to one year's jail for defaming Jakarta businessman Tomy Winata. The March 2003 article in *Tempo*, entitled "Getting Burned?", written by journalists Ahmad Taufik and Teuku Iskandar Ali, alleged that Winata stood to profit from a fire that destroyed a Jakarta textile market on 19 February of that year.

Winata is pursuing two criminal and four civil cases against *Tempo*. One charge is based on a law passed in 1946 which prohibits the publication of false material liable to incite public unrest. Harymurti's prison sentence stems from the prosecution's use of Articles 310 and 311 of the criminal code on defamation.

It's an insult

Although the 1999 *Press Law* was passed to guarantee press freedom, various libel actions have shown a widespread judicial disdain for these media safeguards.

In February 2003, Supratman, an editor at *Rakyat Merdeka*, a tabloid renowned for its abrasive and critical reporting, was given a suspended six-month jail sentence for insulting then President Megawati, an offence under the criminal code (KUHP) which outlaws insults to the president or vice-president and is punishable by up to six years in jail. These 'insult' laws were introduced by the Dutch colonial authorities and were also used by Suharto to quell dissent. *Rakyat* published headlines repeating protesters' claims that Megawati's breath smelled like petrol amid widespread opposition to her fuel policies. The editor claimed in his defence that such information was merely public comment and entitled to publication.

These KUHP or 'insult laws' protect more than just the Indonesian leaders. Even dignitaries of friendly states and



Supratman, editor of *Rakyat Merdeka*, was convicted in February 2003 under Indonesia's criminal code for allegedly insulting then-President Megawati Sukarnoputri. He escaped jail, receiving a suspended sentence. Photograph by Matthew Moore/Fairfax Photos.

their national flags are legally immune from 'insult'. Further, any public authority or body that feels insulted by the media is entitled to seek satisfaction in the courts. As well as a maximum penalty of eight years in jail, a repeat offender can be banned from exercising his/her profession. Similarly open to abuse, contempt law can refer to almost any publication which may threaten the public order.

Although Supratman's headlines may have offended their subject, they are legitimate press functions according to Article 6 of *Press Law 40/1999*, which states that reports may:

- fulfil the public's right to know;
- develop public opinion based upon factual, accurate and valid information;
- control conduct, provide criticism, correction, and suggestion towards any public concern;
- fight for justice and truth.

Alternatives to legal action

After so many years under repressive media restrictions, some in Indonesia – mainly among the business, military and political leadership – still find it difficult to accept a free press and seek legal redress when they feel wronged by its coverage. But there are mechanisms in place to right any perceived wrongs. Where damage to one's reputation is the grievance, Article 5 of the *Press Law* offers a Right to Reply

It is clear that journalists have become fair game for the Indonesian legislature. This vulnerability to prosecution totally violates the largely untested 1999 Press Law ...

and Correct to all citizens. A press council is also provided for in *Press Law 40/1999*. The council should include journalists, media managers and members of the public to ensure transparent resolution of complaints.

But these options are usually ignored by the aggrieved plaintiffs who may bank on a judiciary prepared to impose hefty penalties – including custodial sentences – with the thinly veiled intent of eradicating independent journalism. In addition to Harymurti's pending prison term, Winata was awarded US\$59,000 against *Tempo* and US\$1 million against *Koran Tempo* (*Tempo's* daily edition).

Ethics in journalism

While a lack of journalism training in Indonesia has led to some cases of unethical, and what some regard as reckless reporting, *Tempo* has received acclaim for its ethical and independent journalism. It seems that the Indonesian courts are less interested in encouraging ethical reporting than they are intent on frightening journalists into submission.

Taufik and Ali, who wrote "Getting Burned?", did their utmost to present an accurate and balanced coverage of the story. They even included Winata's denial that he had submitted a proposal to renovate the market where the fire occurred. This was included despite construction workers having told Taufik about Winata's planning proposal and that the works would be funded by a Winata-owned bank.

Tempo presented to the court audio recordings of the interview they conducted with Winata in which the planning proposal was discussed. They also delivered



Bambang Harymurti, editor of Indonesia's *Tempo* magazine, thanks his supporters outside Central Jakarta's court on 16 September 2004. He had just been convicted of criminal libel and sentenced to one year's jail in a case brought against him by Indonesian businessman Tomy Winata. EPA.

testimony from a communications expert confirming that the voice on the tape was indeed Winata's. Winata denied it was his voice. It appears that *Tempo* has a strong claim to the defence of truth. Curiously, however, this evidence was dismissed as irrelevant by the judges.

Banning by bankruptcy

Tempo has been a constant thorn in the side of the old guard in Indonesia. Suharto banned the magazine twice, once in 1982 and again in 1994, but the penalties imposed by the Winata verdict may close *Tempo* for good. The *Press Law* stipulation that "[t]he national press will not be subject to censorship, banning or broadcast bans" (40/1999, 4.2) appears to have been disregarded in this verdict. While not officially 'banned', the courts' response to the *Tempo* claim may have the same effect.

Goenawan Mohamad, *Tempo*'s co-founder and former chief editor, is being sued by Winata for slander. He made a speech at a police station during Harymurti's trial, urging the public to stop Indonesia falling into the hands of criminals. *World Press Review* named Mohamad International Editor of the Year in 1999.

Despite his credentials, the Jakarta District Court has taken the unprecedented step of seizing financial control of his house. Mohamad can continue living there but he cannot sell it to pay *Tempo*'s enormous fine. Such a criminal sanction is usually reserved for cases where the property was bought with illegally obtained funds. In this case, however, the courts are simply cutting off any funding that *Tempo* might use to fight Winata and/or continue operating.

Who is the guilty party?

It is clear that journalists have become fair game for the Indonesian legislature. This vulnerability to prosecution totally violates the largely untested 1999 *Press Law* which stipulates that "[i]n carrying out their profession, journalists are protected by the law" (40/1999, Article 8).

Following the publication of "Getting Burned?", a mob violently attacked the *Tempo* office and its staff, demanding to know the sources for the story. The *Press Law*'s Right of Refusal protects journalists from such demands. *Tempo*

The general public became aware that the politicians were using the laws of defamation to stifle the press and cover their own shortcomings.

believes that Winata hired the mob to support his contention that "Getting Burned?" was liable to incite civil unrest. As Harymurti and his journalists were assaulted, police nearby simply watched on. On 6 October 2004, the Jakarta District Court acknowledged that the journalists were the innocent victims on this point, finding in their favour.

The preface to the *Press Law* makes it clear that those hindering press freedoms are not to be tolerated:

The press "must be able to perform at its best according to its principles, functions, rights, obligations and roles based upon the professional freedom of the press, guaranteed and protected by law and free from any interference and intrusion." (Preface, *Press Law* 40/1999)

If this ideal and the related criminal provision given in Article 18 were implemented, as indeed it should, Winata – and possibly even the judges who have selected the punitive criminal jurisdiction – could be sentenced to two years' imprisonment and fined Rp500 million.

Tempo v Winata is one of many actions facing journalists and it not only threatens the economic viability of *Tempo*, but also encourages self-censorship among other reporters.

Unsurprisingly, *Press Law* 40/1999 has been overlooked by judges whose business interests are often closely aligned with those of defamation plaintiffs like Winata.

And then there is the ever-present corruption issue. Even if members of this so-called 'court mafia' are not acting out of self-interest in jailing journalists, many of them are reported to regularly accept bribes, effectively selling their verdicts to the highest bidder.

Conclusion

The outdated laws of Indonesia have highlighted the problems of criminal defamation in many countries. President Yudhoyono, elected on 20 September 2004, promised to reform the criminal (KUHP) laws available to prosecute defamation and insult and has drafted a new Code. The new draft, however, still contains the 49 laws, and there are concerns that the government may bypass the participatory process in order to push this legislation through as quickly as possible. President Yudhoyono has also allowed his Communication and Information Minister to raid two of the most popular newspapers since he was elected.

Time is yet to tell if President Yudhoyono is truly committed to upholding press freedom and defeating corruption in Indonesia. A new Criminal Code must exclude the repressive 49 Laws and be drafted through a proper consultative process.

The lesson from Indonesia for other countries seeking to decriminalise defamation is that it is necessary – in fact crucial – to have defamation and its close relative, insult laws, struck out of the penal code altogether. While Indonesia has made advances with its liberal *Press Law*, the option still remains to persecute journalists under the penal code. Indonesia teaches us that while this option still exists, it can and will be used.

II. CASE STUDY: GETTING FREE SPEECH IN SRI LANKA

By Suranjith RK Hewamanna,
Attorney-at-Law

How did the Sri Lankan public manage to change the oppressive laws relating to media freedom and criminal defamation? It was not only through the efforts of journalists but also various sectors of the public that the laws were repealed. Sri Lankans had been pressuring to further democratic rights in their society, and freedom of expression was only one element in this broad struggle.

In Sri Lanka there had been a cycle of violence nearly every 15 years due to an acute ethnic problem. Even for some liberal thinkers emergency regulations and anti-terrorism laws were an act of necessity, but in the long run they brought disastrous consequences. As a whole, most democratic rights were curtailed, and freedom of expression was another victim.

Yet in spite of oppressive governments, some civil rights movements like the Centre for Policy Alternatives, professional organisations and trade unions continued the struggle for democratic rights and other forms of fundamental rights. Due to this campaign the Sri Lankan government ratified two important conventions: the UN's *International Convention on Civil and Political Rights* (ICCPR) and *International Convention on Economic, Social and Cultural Rights* (ICESCR). And in 1998 the optional protocols to these conventions were also signed by the Sri Lankan government,

making it possible even for an individual to lodge a complaint to the United Nations Human Rights Committee.

The art of harassment

Around 10 years ago, there was a spate of indictments on defamation filed against editors of newspapers. During this period we noticed that editors of nearly all the newspapers, except some owned by the government, were prosecuted under the law of criminal defamation. They were the lucky ones – others were killed or the target of assassination attempts.

Under the cover of this amendment politicians were able to prosecute newspaper journalists without ever coming before any court of law.

Criminal defamation was an easy way for any government, for the flimsiest reason, to prosecute media personnel. One newspaper editor attended more than 100 dates before a court of law when he was charged for criminal defamation. In other instances, a complaint to the Press Council, mostly by state officers against the media, was an easy form of intimidation for silencing the media.

The Law of Contempt was also misused by the state to harass journalists and other political opponents. In this context one drawback was that there is no codified law as

The case of Victor Ivan

One case catching the public eye from the early 1990s regarded a popular journalist and editor of the Sinhala newspaper *Ravaya*, Victor Ivan. He was convicted of criminal defamation on several occasions. One case in particular highlighted the need for reform.

Ivan was convicted of defaming the general manager of the Railway Department, WAK Silva, who was the subject of a special inquiry by a Presidential Commission for bribery and corruption. The Commission found the general manager guilty as charged, yet Victor Ivan's coverage of the Commission's finding was still deemed defamatory by the High Court. No defence of truth or public interest was acknowledged.

After the Supreme Court refused to invalidate Ivan's indictments in 1998, he appealed to the United Nations Human Rights Committee (UNHRC). He told the court of the various convictions delivered by Attorney-General Sarath Silva since 1993. The Committee heard that these verdicts were given without proper assessment of the evidence as Sri Lankan legislation requires. The cases were designed to intimidate him, Ivan argued, as well as limit his freedom



Victor Ivan, editor of Sinhala newspaper *Ravaya*. He has been convicted of defamation offences on several occasions. His appeal to the United Nations Human Rights Committee in 1998 raised the press freedom movement's profile on the international stage, which was instrumental in bringing about the repeal of Sri Lanka's criminal defamation laws in 2002. Photograph by TamilNet.

The Commission found the general manager guilty [of bribery and corruption] as charged, yet Victor Ivan's coverage of the Commission's finding was still deemed defamatory by the High Court.

of expression and obstruct his publication.

On 26 August 2004, two years after the criminal defamation laws were repealed by a unanimous parliament, the UNHRC ruled against the Sri Lankan High Court. The Committee found that the lingering case against Ivan left him in a state of "uncertainty and intimidation" by having indictments for criminal defamation left pending for several years, and that this had a "chilling effect which unduly restricted the author's exercise of his profession".

The ruling set an important precedent in the eradication of criminal defamation law. The Sri Lankan High Court had violated Ivan's right to freedom of

expression, as enshrined by Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR).

Ultimately, it was Victor Ivan's work and that of his fellow journalists around the world which led to the repeal of criminal defamation from the Sri Lankan criminal code in 2002.



Sri Lankan journalists protest against the government's use of anti-terrorism laws against the media. This demonstration was sparked by the use of the *Prevention of Terrorism Act* to arrest a television news director in early January 1997. Such actions by the government were part of a systematic program of persecution of media personnel in Sri Lanka. AFP Photo.

for Contempt of Court. This matter has been debated at length in Sri Lanka and has had the test of a parliamentary select committee as well.

In Sri Lanka, criminal defamation was a penal offence and required the attorney-general's sanction before an indictment could be filed. Originally it was necessary for the aggrieved party to start criminal defamation proceedings by making a complaint to the police under Sec.135 (f). Of course the previous sanction of the attorney-general was necessary for any court to take notice of any such complainant. In 1980, an amendment was made to Sec.135 to include a "Police Officer" to be the complainant. With this change in Sri Lanka, it became a pattern for politicians to use state power to persuade police officers to institute proceedings under the law of criminal defamation. Under the cover of this amendment, politicians were able to prosecute newspaper journalists without ever coming before any court of law. It was, however, still necessary to obtain the attorney-general's sanction prior to taking the matter before a court. Petty government officers resorted to going to the Press Council to avoid having to get the attorney-general's sanction. The auditor-general made no less than six complaints against an editor of *Attha* newspaper at that time.

The general public became aware that the politicians were using the laws of defamation to stifle the press and cover their own shortcomings.

In 1987, due to continuous public concern, criminal defamation was made an offence where a Mediation Board

certificate was necessary to institute legal action. Still the politicians kept the prerogative by keeping this requirement to be unnecessary if the prosecution was done by the attorney-general.

Changing places can change laws

With changing political fortunes in Sri Lanka, sometimes the victims of criminal defamation, contempt of court, parliamentary privileges and the Press Council became the rulers themselves. This was one reason for the subject of criminal defamation becoming an issue of wide public debate, and this resulted in the repeal of the laws of criminal defamation in Sri Lanka in 2002.

The existing Press Council was also dismantled and an improved Press Complaints Commission instituted in its place. Journalists, publishers and media trade unions now elect the commission members who investigate complaints made by the public.

In Sri Lanka it has been a continuous struggle to remove the criminal aspects of the law of defamation from the statutes. In this respect, Sri Lankan lawyers and journalists appreciate the solidarity shown by brother organisations in the international arena.

It is my sincere wish that these amendments will not be misused, keeping in mind the necessity to respect and safeguard the privacy and dignity of the individuals under Article 15(2) to the Constitution of the Sri Lanka.

12. A CAMPAIGN CHECKLIST

The time is ripe to get rid of criminal defamation, once and for all. From the campaign experience of Ghana and Sri Lanka, we know that it's probably not going to happen without constant and unrelenting effort, especially on the part of journalists and their associations and unions.

So what can we do?

The campaign experience from Ghana and Sri Lanka points to the need to tackle the issue on a number of fronts: to intervene in current cases where journalists are threatened with jail; to get politicians to go on the record

Take out ads in the newspapers. Write editorials and articles about the effect that criminal defamation provisions are having on free speech. Get the public on board.

opposing criminal defamation; to draft and present legal packages for parliamentarians to implement; publicise the issue; provide a number of viable alternatives to defamation; strengthen journalists' ethics; and encourage newspapers and broadcasters to adopt editorial guidelines about complaints and apologies.

The IFJ, representing more than 500,000 journalists in close to 120 countries worldwide, advocates the elimination of criminal defamation laws. We also call for

the amendment of civil defamation laws to ensure that the fines are proportionate to the harm caused. Fundamental to this aim is the need to create awareness of the problems associated with criminal defamation and 'insult'.

The only legitimate purpose of defamation laws is to protect reputations. It appears, however, that in their effort to seek damages through crippling payouts or absurd prison terms, the plaintiff nearly forgets about restoring his/her reputation.

International condemnation of such attempts to silence an independent media is having a positive effect on media law reform around the world. Leaders' pledges to abolish criminal defamation and insult laws must be acted on so that these draconian statutes no longer hang over the heads of independent journalists.

Raising the profile of journalism through more ethical conduct and the promotion of self-regulated bodies such as press councils will help eradicate the use of criminal defamation around the world.

We encourage all IFJ affiliates to participate in the ongoing process of ensuring that the press is protected by – and from – the law.

We also hope that this report may offer useful information and examples as to how others have tackled this problem around the world.

Campaign against criminal defamation checklist:

✓ **Build coalitions:** Get as many other groups involved as possible, including journalists and their unions, employer associations, media companies, human rights groups, civil society, lawyers' groups and human rights advocates.

✓ **Internationalise/regionalise the issue:** Make sure people know about your struggle. Involve the IFJ, IFEX, Article 19, the United Nations, the regional human rights association. Contact the organisations listed in the Useful Resources section of this guide.

✓ **Prepare a legal package:** Ask lawyers to draft alternative laws and changes to existing laws to decriminalise defamation, and present a package of legislative reform to the government. Be sure to have criminal defamation removed from the penal code.

✓ **Provide viable options:** Prepare a paper to establish or revive a statutory or voluntary press council in your country. Ask your union to make it a campaign priority. Contact employers and unions. Set up these structures and show that they can work.

✓ **A system for complaints against media:** Ask your newspaper/broadcaster to adopt an in-house procedure for dealing with complaints like an ombudsman or quick correction system. Get your union to adopt it as a campaign platform. Make it an industrial issue. Put it in your collective agreement bargaining claim.

✓ **Get politicians to agree:** Ask politicians of all persuasions (including those in opposition) to publicly

adopt a position against criminal defamation. Remind them that politicians can be jailed for defamation, too. Remember Sri Lanka's experience: those that had been the victims of persecution under criminal defamation became the legislators who abolished it.

✓ **Create a public campaign:** Take out ads in the newspapers. Write editorials and articles about the effect that criminal defamation provisions are having on free speech. Get the public on board.

✓ **Ratify international conventions:** Lobby your government to ratify the UN *International Convention on Civil and Political Rights* (ICCPR) and UN *International Convention on Economic, Social and Cultural Rights* (ICESCR) plus the optional protocols. This will give your argument for free speech added weight.

✓ **Intervene in cases:** The World Press Freedom Committee has a model *Amicus Curiae* brief in Spanish and English which can be used to intervene in current criminal defamation trials in your country, and which comprehensively argues for the abolition of criminal defamation and insult laws.

✓ **Promote/adopt a code of ethics:** Enhance the ethical standards of journalists in your country. Lobby employers for ethics training. Run ethics training yourselves. Promote ethics wherever you can – posters, cups, t-shirts, books and at meetings, conferences and seminars.

Campaigning for global solidarity: “Don’t jail journalists”

The IFJ launched a global solidarity campaign against the use of criminal defamation laws in Indonesia. Titled “Don’t jail journalists”, the campaign was launched on 16 August 2004. The campaign was in response to the growing number of journalists being tried under the Indonesian criminal code, and linked specifically to a court date in the trial of *Tempo* journalists Bambang Harymurti, T. Iskandar Ali and Ahmad Taufik. Ahmad Taufik, a founding member of AJI, had previously been jailed under the criminal code during an attempt by the Soeharto regime to clamp down on press freedom. In 1995, he was jailed for three years for writing reportedly “hate-sowing articles”. In 1997, he was awarded the 1995 CPJ International Press Freedom Award. He could not accept the award in 1995 because he was serving out his three-year sentence in jail.

In response to the latest charges, IFJ affiliates from around the world were asked to deliver letters of protest to the Indonesian embassy or representative in their countries on 16 August 2004. The letter, from IFJ President Christopher Warren to then President Megawati Soekarnoputri, called on the Indonesian Government to remove defamation as a criminal offence and restrict financial damages in civil defamation to

sensible and rational amounts. The IFJ also called for the removal of the crime of “insulting the President or Vice-President” from the criminal code.

Journalists’ organisations in Japan, Thailand, Taiwan, the Philippines, India, Sri Lanka, Pakistan, Malaysia, New Zealand, Australia, Cyprus, Belgium, Denmark, Norway, Germany, Greece, the United Kingdom and the United States and others delivered the letters of protest on 16 August to the Indonesian embassies in their countries. The day of action received coverage worldwide and increased pressure on the Indonesian government to change the laws. Both sides of politics during the Indonesian Presidential elections in late 2004 indicated that they would repeal the criminal provisions, though as yet, this is yet to happen.



From left to right: National Union of Journalists - UK Deputy General Secretary John Fray, Vice-President Tim Lezard and International Federation of Journalists Honorary Treasurer Jim Boumelha holding the letter to be delivered to the Indonesian ambassador outside the Indonesian embassy in Grosvenor Square, London. Photograph by Rod Leon.



Mr. Marolop Nainggolan (right), Director of General Affairs of Indonesian Economic and Trade Office to Taipei meets with Ray Chang from the Association of Taiwanese Journalists. The meeting was part of the International Federation of Journalists anti-defamation Day of Action on 16 August 2004. Photograph courtesy of Ray Chang.



Mr. Garibaldi Sujatmiko (left), head of Press and Media Bureau of the Presidential Palace in Indonesia accepts the International Federation of Journalists protest letter from Nezar Patria, Secretary General of Aliansi Jurnalis Independen on the 16 August Day of Action. Mr Sujatmiko promised to deliver the letter to the President and offered to facilitate a meeting between the Association and then-President Sukarnoputri. Photograph courtesy of Nezar Patria.

13. USEFUL RESOURCES (in alphabetical order)

American Convention of Human Rights, 1969. Article 13 is the article of 'Freedom of Thought and Expression'. www.oas.org/juridico/english/Treaties/b-32.htm

Amnesty International. As a worldwide movement of people who campaign for internationally recognised human rights, this organisation's website contains useful criminal defamation information and examples of worldwide defamation cases and issues. www.amnesty.org

Article 19. Named after the article regarding freedom of expression in the human rights convention. The organisation ensures freedom of speech through campaigns and publications. www.article19.org

Article 19 Rights VS Reputations; Campaign against the abuse of defamation and insult laws 2003. Concise resource produced by Article 19 detailing defamation laws and ways to campaign against abuse of criminal defamation and insult laws. www.article19.org

Article 19 Defining Defamation: Principles on Freedom of Expression and Protection of Reputation 2000. www.article19.org

Asian Human Rights Commission. Promotes human rights throughout Asia through various programs and campaigns. The site contains up-to-date human rights news and developments from Asia. www.ahrchk.net

Australian Press Council. This is the self-regulatory body of the Australian print media that aims to preserve press freedom and promote ethical and responsible reporting. Site contains various documents and links on defamation in the media, including court cases. www.presscouncil.org.au

Central Asian and Southern Caucasian Freedom of Expression Network. This is a voluntary association of public organisations who protect freedom of expression and support press freedom in line with Article 19 of the *Universal Declaration of Human Rights*. Site gives access to news and materials about freedom of speech and expression in the countries of Central Asia and the Southern Caucasus. www.cascfen.org

Committee for Protection of Journalists. CPJ is a non-profit organisation of journalists banded together to protect free press around the world. It monitors more than 100 countries with a country database of up-to-date records of press freedom violations, and links to other related sites. www.cpr.org

European Convention on Human Rights, 1950. Article 10 details 'Freedom of Expression.' www.echr.coe.int/convention/webConvenENG.pdf

Freedom Forum Online. A nonpartisan foundation dedicated to free press, free speech and free spirit for all people. www.freedomforum.org

Freedom House. Aims to advance and expand political and economic freedom throughout the world. Site contains a 'freedom monitor' and a 'press freedom survey' that track trends in media freedom and examine individual country media environments, identifying political and economic factors affecting reporting in each country. www.freedomhouse.org

Human Rights Watch. Protects human rights of people around the world. Site contains a comprehensive Asia link detailing current issues and occurring throughout Asia. www.hrw.org

Information Resource for Independent Press Councils. This site contains the largest collection of press codes of conduct in the world, including ethics codes relating to defamation. http://www.presscouncils.org/aipce_index.php

Inter-American Court of Human Rights. Written comments submitted in response to case no. 12.367 "La Nacion", a high-profile defamation law case in Costa Rica 2004. For comments by Article 19 and Open Society Justice Initiative, link from www.ifj.org

International Federation of Journalists. IFJ has more than 500,000 members in over 110 countries. www.ifj.org

International Federation of Journalists – Asia-Pacific. IFJ office in the Asia-Pacific, has a resource page on campaigning against criminal defamation. www.ifj-asia.org

International Journalists' Network. Site contains worldwide news relevant to journalists and those in the media industry, including media laws information and criminal defamation information. www.ijn.net.org

International Press Institute. The Institute provides links and reports looking at media developments, changes and updates. www.freemedia.at

Justice Initiative. This organisation has particular expertise in the area of defamation law, having been engaged in a number of law reform projects, including being part of the committee of experts which drafted the Bosnian civil defamation law and being in the working group currently re-drafting the Albanian civil and criminal defamation laws. www.justiceinitiative.org

Justice Initiative. "Inter-American Court Quashes Journalist's Libel Conviction" 2004. News release detailing the Open Society Justice Initiative's response to a high-profile criminal libel case "La Nacion" in Costa Rica. www.justiceinitiative.org/activities/foifoe/foe

Organisation for Security and Cooperation in Europe. Provides regional security for 55 states throughout Europe, Asia, America and Caucasus. Their services include conflict prevention, democratisation, arms control, border management and terrorism prevention. www.osce.org

Organisation for Security and Cooperation in Europe. "Statement of the Fourth Winter Meeting of the OSCE Parliamentary Assembly" 2005. Address to the assembly by the Representative on Freedom of the Media, on subject of reforming defamation provisions. www.osce.org

Organisation of American States (OAS). The OAS works to promote cooperation and the advancement of common interests in Western Hemisphere countries. Among other objectives, they aim to strengthen human rights and promote good governance and a commitment to democracy. www.oas.org

Reporters Committee for Freedom of the Press. The site includes up-to-date examples of press freedom cases, mainly in America but also abroad. It also has lists of online publications and topical guides on the First Amendment and FOI. www.rcfp.org

Reporters Sans Frontières. Originally a French organisation, now it is worldwide. An apolitical organisation fighting for freedom of speech by ensuring press freedom. www.rsf.org

Reporters Sans Frontières. “Libel and insult law: what more can be done to decriminalise libel and repeal insult laws?” Recommendations from a conference on Libel and Insult Laws, organised by the Organisation for Security and Cooperation in Europe on 24-25 November 2003. www.rsf.org/print.php3?id_article=8607

United Nation’s High Commissioner for Human Rights. The High Commissioner is the principal UN official responsible for human rights. This site includes a comprehensive human rights library and a copy of the 1948 *Declaration of Human Rights* in more than 300 languages. www.ohchr.org

United States Mission to the OSCE (Organisation for Security and Cooperation in Europe). “Freedom of Expression, Free Media and Information”, statement by Mr Ronald McNamara, US delegation to the OSCE Implementation Meeting October 7, 2003. Speech details United States’ support of the abolition of criminal defamation and insult laws. www.osce.usmission.gov

Universal Declaration of Human Rights, 1948. Article 19 details the right to “Freedom of Opinion and Expression”. www.hrweb.org/legal/udhr.html

World Press Freedom Committee. Sample case detailing how to intervene against defamation in a criminal defamation case. Text in Spanish. <http://www.wpfc.org/site/docs/txt/Model%20CD%20and%20Insult%20Brief%20in%20Spanish.doc>

World Press Freedom Committee. Sample case detailing how to intervene against defamation in a criminal defamation case. Text in English. <http://www.wpfc.org/site/docs/Model%20CD%20and%20Insult%20Laws%20Brief%20March%202005.doc>

World Press Freedom Committee. Campaign against insult laws, which are a form of criminal defamation statute. <http://www.wpfc.org/index.jsp?page=Campaign+Against+Insult+Laws.html>

World Press Freedom Committee. “Hiding From The People; how ‘insult’ laws restrict public scrutiny of public officials....what can be done about it!”. Handbook on insult laws and their effects. www.wpfc.org

World Press Freedom Committee. The WPFC is the watchdog on press freedom for UNESCO, the United Nations, OSCE and European Union. The site has a listing of members of the coordinating Committee of Press Freedom organisation and links to their other sites. www.wpfc.org

International Federation of Journalists

President: Christopher Warren
General Secretary: Aidan White

IFJ Headquarters

International Federation of Journalists
Residence Palace, Block C
155 Rue de la Loi
B-1040 Brussels
Belgium
Telephone: +32 2 235 22 00
Telefax: +32 2 235 22 19
Email: ifj@ifj.org
Website: www.ifj.org

IFJ Asia-Pacific

245 Chalmers Street
Redfern NSW 2016 Australia
Telephone: +61 2 9333 0999
Fax: +61 2 9333 0933
Email: ifj@ifj-asia.org
Website: www.ifj-asia.org

IFJ South Asia Office

Mobile: +91 9818 383 669
Email: ifjsouthasia@hotmail.com

IFJ South East Asia Office

c/- Aliansi Jurnalis Independen (AJI)
I. Danau Poso No. 29
Blok D.1
Bendungan Hilir
Jakarta Pusat 10210
Indonesia
Telephone: +62 21 579 00 489
Fax: +62 21 571 10 63
Email: ajioffice@aji-indonesia.or.id or
sekretariat_aji@yahoo.com

IFJ Sri Lanka Office

c/- CPA
24/2, 28th Lane, Off Flower Road
Colombo 07 Sri Lanka.
Telephone: +94 11 4714460
Fax: +94-11 2565304/6
Email: ifjsrilanka@cpalanka.org

IFJ Tokyo

Itoh Building 203
Kudan Minami 4-2-12
Chiyoda-Ku, Tokyo
Japan T102-0074
Telephone/Telefax: +81 3 3239 4055
Email: ifj-tokyo@triton.ocn.ne.jp

IFJ Africa

17, Boulevard de la République,
BP 21 722
Dakar Sénégal
Telephone: +221 842 01 42/ 842 01 41
Fax: +221 842 02 69
Email: fijafrika@sentoo.sn
Website: <http://www.ifjafrique.org>

IFJ Europe (EFJ/IFJ)

Residence Palace
Rue de la Loi 155
B-1040 Brussels
Belgium
Telephone: +32 2 235 22 02
Telefax: +32 2 235 22 19
Email: efj@ifj.org

IFJ Latin America

c/- SNTIP
Casa Nacional de Periodistas
Oficina 3, piso 2, Ala “ B “
Avenida Andres Bello,
entre Las Palmas y La Salle
Caracas Venezuela
Telephone: +58 212 793 19 96
Telefax: +58 212 793 28 83
Email: sntp@reacciu.ve



The IFJ is a non-governmental, non-profit organisation that promotes coordinated international action to defend press freedom and social justice through the development of strong, free and independent trade unions of journalists. IFJ Asia-Pacific coordinates IFJ activities in the Asia-Pacific region. The IFJ works closely with the United Nations, particularly UNESCO, the United Nations Human Rights Commission, WIPO and the ILO, the International Committee of the Red Cross, the European Union, the Council for Europe and with a range of international trade union and freedom of expression organisations. The IFJ mandate covers both professional and industrial interests of journalists.

Visit www.ifj-asia.org or www.ifj.org for more information.