

# DECRIMINALIZING SPEECH OFFENSES

## STANDARD SETTING DOCUMENT

This document is part of a series of Standard Setting Documents prepared by Maharat Foundation to stimulate public discourse on media law reform in Lebanon in line with freedom of expression. This comes within the framework of the "Media Reform to Enhance Freedom of Expression in Lebanon" project, implemented in collaboration with Legal Agenda and Media and Journalism Research Center, with the support of the European Union.

### 1 Key messages

1. The Lebanese Constitution guarantees freedom of expression, and Article 19 of the International Covenant on Civil and Political Rights, which Lebanon ratified, states that **everyone has the right to freedom of expression**. However, Lebanese penal laws regarding defamation do not adhere to the conditions outlined in Article 19. Dozens of cases have been documented where citizens and journalists were summoned based on charges of slander, defamation, contempt, and disparagement.
2. International legislation unanimously agrees that **imprisonment is unjustifiable** as a punishment for publishing and expression crimes, as it is disproportionate to journalists' right to free expression.
3. The **language of the Lebanese penal law is vague** and open to interpretation according to the rulers' interests. The authorities use the law as they see fit and in line with their interests.
4. The authorities persist in **prosecuting journalists on defamation charges** arbitrarily, and prosecutions vary before criminal courts, the press court, and military courts. Public prosecutors selectively apply penal laws related to defamation, without adhering to a single standard, thereby advancing the interests of influential political and religious entities.

### 2 Summary of the main recommendations



#### To the authorities:

- Compliance with the freedom of expression standards guaranteed in the constitution and international charters, enhancing freedom of opinion and expression, and abolishing criminal penalties related to defamation and insult. It is crucial to replace criminal penalties with civil ones and clearly delineate the boundaries of freedom of expression in a manner that is not subject to interpretation or arbitrariness and refrain from using any ambiguous terms.
- Cease criminal prosecutions in cases of expression and refrain from prosecuting civilians before military courts.
- The law should explicitly codify the concept of public interest in criticizing public figures and authorities, refraining from granting them special protection from defamation, and preventing the use of civil or criminal defamation laws by public officials in matters related to their public duties.



#### To the media sector:

- Encouraging critical discourse is essential for a vibrant civil society and effective democracy.
- Pressuring for the decriminalization of defamation, libel, and insult in the proposed media law under consideration in the parliament, and the adoption of a modern law that respects freedom of expression standards.



#### To the international community:

- Alignment with the position of the United Nations Human Rights Committee, which has stated that all countries should consider abolishing criminalizing defamation (...) and that imprisonment is entirely inappropriate as a penalty.

Violations against journalists have varied, ranging from summonses and judicial prosecutions to physical assaults aimed at silencing those who defend citizens' rights and expose corruption. These actions target journalists and activists who write about corruption, misconduct of security agencies, and criticize the political and economic situations, as well as violations against vulnerable groups. Powerful individuals accused of corruption or subjected to criticism have resorted to intimidation tactics, utilizing criminal laws in their favor and imposing penalties, sometimes leading to imprisonment. Furthermore, journalists are often summoned and forced to sign pledges preventing them from criticizing plaintiffs, in the absence of any civil legal regulation for accountability on defamation and the lack of any contemporary legal mechanism distinguishing between the principles of offense and harm in expressing opinion.

What is happening represents a deliberate and escalating trend by the Lebanese authorities resembling the approach of repressive regimes, attempting to impose control over freedom of expression and intimidate journalists to divert attention from their failure to manage the country, their responsibility for the ongoing collapse, the squandering of billions of dollars, and their inability to secure the basic needs of citizens.

This contradicts Article 19 of the International Covenant on Civil and Political Rights, to which Lebanon is a signatory, stating: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The Covenant allows states to restrict freedom of expression to protect the reputation of others, but under strict conditions. Such restrictions may be subject to certain limitations provided they are prescribed by law and are necessary: (a) to respect the rights and reputation of others, and (b) to protect national security, public order, public health, or morals. Restrictions imposed on freedom of expression "shall not put the right itself in jeopardy."

The United Nations Human Rights Committee has considered that all states "should consider decriminalizing defamation," and the application of criminal law should only be considered in the most serious cases, considering that imprisonment is not an appropriate penalty at all.

## List of Standards



- 1- Restrictions on freedom of expression require three conditions: clarity in the law, designed to achieve legitimate objectives, and proportionate to achieving this goal and necessary for its realization.
- 2- Compliance with international legislation, which considers imprisonment as unjustified punishment for publishing and expression crimes and disproportionate to the right of journalists to free expression.
- 3- Pre-trial detention in press crimes is not permissible, as explicitly stated in Article 28 of the Press Law amended by Law 330/1994. Therefore, journalists, publishers, writers, or authors cannot be detained pre-trial, and this should be applied to all in expression cases.
- 4- The imposed commitment to silence, which requires the summoned person to pre-sign a commitment to refrain from addressing the claiming political figure or abstaining from discussing a specific issue, constitutes a blatant violation of constitutional rights, especially freedom of expression and belief. It implicitly acknowledges the criminal wrongdoing attributed to them before a judicial ruling on the matter by pledging not to repeat it.
- 5- Compliance of the Lebanese judiciary with the standards of guaranteed freedom of expression in the constitution and international charters, refraining from imposing freedom-restricting penalties in opinion cases, limiting them to civil liability without any imprisonment penalties.

## The general framework and discussion topics

This paper is part of the project "**Media Reform to Enhance Freedom of Expression in Lebanon**," in collaboration with Legal Agenda and Media and Journalism Research Center, supported by the European Union. It is based on two research papers on the subject. The first, authored by Dr. Ali Mourad, titled "Repealing Defamation Laws Weaponized Against Media Professionals in Lebanon: A Step Towards Upholding the Freedom of Speech, Defending the Freedom of Media and Fighting back against the Oppressive State" The second paper, prepared by Dr. Andrei Richter, titled "Decriminalization of Defamation in the Context of Free Speech: A European Perspective."

The **first paper** aimed to analyze the Lebanese legislative framework and its contradiction with the constitution and international obligations. It also examined the escalating trend of arbitrary practices against journalists, aimed at restricting freedom of expression and the press, as well as analyzing judicial decisions.

The paper documented several cases related to the situation of electronic freedoms, ranging from intimidation and threats to the criminalization of activities on social media platforms and free writing on personal blogs. It presented successive violations against bloggers and journalists, in the absence of laws protecting internet freedom, which remains subject to the jurisdiction of the criminal judiciary. Additionally, it highlighted attempts at censorship by the cybercrime bureau against bloggers and citizens.

Despite the constitutional value of freedom of expression, violations committed practically undermined it. Journalists, bloggers, and social media users have faced numerous violations of their right to expression through a set of laws affecting freedom of expression, without clear distinction between publishing outlets and social media platforms. These laws include the Penal Code, the Code of Criminal Procedure, the publication Law, the Military Judiciary Law, the Right to Access Information Law (Whistleblower Protection), the Electronic Transactions and Personal Data Law, and the broadcasting Law.

The **second paper** addressed the European experience in decriminalizing defamation, explaining the main international trends related to the use of criminal defamation laws and their impact on journalists and press freedom, in addition to highlighting best practices in Europe. It presented key regulatory standards for media activity, such as restrictions on government intervention, privacy protection, right of reply, child protection, and support for European content in broadcasting, which are uniform standards in the European Union.

The paper presented positions from international organizations regarding the Lebanese situation, such as those expressed by the United Nations Human Rights Committee (May 2018), expressing concern about "criminalizing defamation, insult, criticism of public officials, and defamation, punishable by imprisonment." It recommended that Lebanon abolish the criminalization of insults and criticism against public officials, consider completely decriminalizing defamation, and "agree in any case to apply criminal law only in the most serious cases," taking into account that imprisonment is never an appropriate punishment for defamation cases.

#### On the Governance Level

- Abolishing defamation crimes is essential to ensure effective exercise of freedom of the press, journalism, and expression.
- Compliance by the Lebanese judiciary with the guaranteed standards of freedom of expression in the constitution and international conventions, refraining from imposing freedom-restricting penalties in opinion-related cases, limiting them to civil liability without any prison penalties. This should be applied universally in expression-related cases.
- Prohibiting investigations with journalists at police stations, investigating judges, and public prosecutors. Any complaint or allegation should be directly referred to the competent court, and individuals accused of defamation should be directly referred to the Publication Court for trial instead of being investigated by security agencies.
- Striving for a fair balance between protecting individuals' reputations and the freedom to access or transmit information, in conjunction with the principle of proportionality when dealing with defamation cases, including online platforms.
- Abolishing all Lebanese legal texts providing special protection for heads of states, local governments, or foreign officials, regardless of their positions in power.
- Enacting legal and judicial reforms that guarantee freedom of expression and the press.
- Non-prosecution of civilians in military courts: Amending Article 24 of the Military Judiciary Law to prohibit the trial of civilians and all children in military courts and restricting the prosecution of civilians in military courts to cases that threaten state security and military institutions.
- Depriving the Public Prosecution of the authority to take immediate special measures on crimes not covered by the publication Law, prohibiting pre-trial detention, or giving journalists the choice to apologize, delete their posts, or sign a silence pledge under the threat of pre-trial detention.

#### On the Media institutions level

- Encouraging critical discourse is essential for a vibrant civil society and effective democracy.
- There is a necessity for journalists to stand united in the "battle to defend freedoms."
- Pressuring for the decriminalization of defamation, libel, and slander in the proposed media law currently under review in the Parliament and the enactment of a modern law that respects international standards.
- Advocating for laws to protect journalists and whistleblowers who monitor officials, record their violations, and expose their misconduct, as reform cannot be achieved without such laws in place

#### on the international level

- Aligning with the stance of the United Nations Human Rights Committee, which advocates for all countries to consider decriminalizing defamation and deems imprisonment as entirely inappropriate.
- Lebanon no longer adheres to international standards of human rights regarding freedom of expression. Therefore, there is a call for the international community and relevant institutions to exert pressure to rectify the situation.
- Documenting violations committed by judicial and security authorities and elevating them to international bodies that influence Lebanese authorities.