

RESOLUTION ON CRIMINAL DEFAMATION AND INSULT LAWS.

Assembly of Delegates of PEN International, meeting at its 80th World Congress in Bishkek, Kyrgyzstan 29th September to 2nd October 2014

A number of countries have laws which criminalize defamation, imposing severe penalties, including imprisonment, for those who damage the reputation of another. These laws are often coupled with laws which make it illegal to criticize presidents and other public officials, known as insult laws. These laws are often used to silence critics.

Civil law exists to provide relief and restitution when one person harms or threatens to harm another's interests without justification. An individual or institution who believes they have been defamed can take civil action to restore their reputation and exact damages.

To criminalize defamation has the effect of introducing disproportionate penalties for the expression of an opinion or the publishing of an allegation, and may severely restrict a writer's ability to publish opinion, allegation or even fact which has the potential to damage another party for fear of a criminal charge, a possible prison sentence and a long-term criminal record. To criminalize criticism of authorities severely stifles reporting and public debate.

These laws have the effect of criminalizing aspects of the routine work of journalists, such as reporting on criticism of or allegations of malfeasance among public officials or the public debate around those.

While we recognize that private citizens have a right to take legal action to protect their reputations from malicious defamation, we believe that civil redress is adequate in such instances and criminal prosecution stifles criticism of public officials and prevents public debate. Public officials should be open to scrutiny, even criticism, if they are to be made accountable to their publics.

There are numerous recent examples of the use of such laws to stifle free speech. For example:

- In July 2013 authorities in Somaliland used criminal defamation laws to sentence manager Mohamed Ahmed Jama and editor Hussein Hassan Abdullahi of the daily, *Hubaal*, to one and two years' imprisonment, respectively. The daily had published articles that implicated the first family in a corrupt goods procurement deal and the Ethiopian Consulate in the importation of illegal goods.

- On 13 December 2009, Iranian blogger Hossein Ronaghi-Malerki was arrested for discussing politics in a series of critical blogs which were blocked by the government. He was held in pre-trial detention in solitary confinement for 10 months, and then tried and convicted on charges of insulting the Supreme Leader, insulting the President, membership of the Internet group Iran Proxy, an anti-censorship group of which he was a founder - and spreading propaganda against the system. He was sentenced to 15 years in prison. The blogger developed kidney disease whilst in prison, possibly as a result of torture. Briefly allowed medical leave in 2012, he was re-arrested before the presidential election. He is still in prison, where his pleas to be allowed leave for medical treatment have been denied.
- In April 2014, a Thai court formally charged two journalists - Alan Morison and Chutima Sidasathian - of the *Phuketwan* website with criminal defamation. The charges, brought by a navy official, stem from a paragraph in a story the two journalists published about alleged trafficking by rogue elements inside the Thai military of Muslim Rohingya, people who had fled persecution in Burma. Morison and Chutima face a maximum of seven years in prison.
- In July 2013, Turkish novelist, essayist and journalist Ahmet Altan was found guilty of having committed criminal defamation against the Turkish Prime Minister Recep Tayyip Erdoğan and was handed a "2800 punitive fine commuted from an 11-month prison sentence. The case was in relation for an article confronting the prime minister over his defence of and refusal to apologise for the Roboski Massacre, during which 34 Kurdish civilians crossing the border from Iraq to Turkey lost their lives as a result of a Turkish airstrike. His appeal is ongoing.
- In April/May 2014 two Brazilian journalists were convicted on charges of criminal defamation. Ricardo Boechat, host of a news program on the TV network Bandeirantes was sentenced to six months and 16 days, suspended in favour of community service, for accusing a local senator of corruption and nepotism. Aguirre Talento, a journalist for the newspaper *A Tarde*, received a six-month jail sentence, suspended in favor of community service and a fine, for alluding to the authorities' investigation into a businessman accused of noncompliance with environmental rules on a construction project.
- In South Africa, former *Sowetan* journalist Cecil Motsepe was sentenced to 10 months in prison or a fine of R10 000, suspended for four years, after being charged with criminal libel for accusing a magistrate of being lenient on white defendants. His appeal is currently pending.

There is growing international consensus that criminal defamation infringes fundamental rights to freedom of expression. The UN and the OSCE have recognised the threat posed by criminal defamation laws and have recommended that they should be abolished. The UN Human Rights Committee, the independent body of experts that provides the definitive interpretation of the International

Covenant on Civil and Political Rights (ICCPR), has said that "At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

The OSCE Parliamentary Assembly has called for the abolition of all laws that provide criminal penalties for the defamation of public figures or which penalize defamation of the state or state organs. The UN, OSCE and OAS Special Mandates have gone even further, stating: "*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.*"

The Declaration of Table Mountain, adopted by World Association of Newspapers and News Publishers and the World Editors Forum in 2007, called on "States to repeal insult and criminal defamation laws, so as to promote the highest standards of press freedom in Africa." The African Commission on Human and Peoples' Rights meeting in November 2010 resolved that "criminal defamation laws constitute a serious interference with freedom of expression and impede the role of the media as a watchdog, preventing journalists and media practitioners to practice their profession without fear and in good faith."

The General Assembly of PEN International calls on all governments:

- To repeal criminal defamation and insult laws
- To drop all existing charges against writers and journalists under criminal defamation and insult laws
- To release all writers and journalists currently detained or imprisoned on criminal defamation charges.