

## RESOLUTION #19: CRIMINAL DEFAMATION AND INSULT LAWS.

*The Assembly of Delegates of PEN International, meeting at its 81st World Congress in Quebec, Canada, 13th to 17th October 2015*

Despite the growing international consensus that criminal defamation infringes the fundamental right to freedom of expression as expressed by international and regional human rights bodies and mechanisms, prosecutions of journalists and other writers under criminal defamation and insult laws continue in a wide range of countries. These pernicious laws, which carry severe penalties including imprisonment, are widely used by those in positions of power to silence critics.

They introduce disproportionate penalties for the expression of opinion or the publishing of an allegation, and are frequently used to target journalists who uncover corruption or malfeasance and abuse of power by political leaders and state officials. Such laws have a chilling effect on investigative reporters who are conscious of the possibility of serving lengthy prison sentences and leaving them with a criminal record. Members of civil society also face similar reprisals when expressing themselves in the public sphere, including on social media. The result is the stifling of reporting and public debate and difficulty in holding power to account.

While there have been some positive changes in the last year – such as the partial decriminalisation of defamation in **Lithuania**, other countries have introduced new penalties for defamation, such as **Kuwait's** new cybercrime law. Journalists and writers around the world have continued to face prosecution under such laws including in:

- **Burkina Faso**, where Boureima Ouédraogo, the managing editor of Le Reporter, a privately-owned investigative newspaper, was sentenced to three months in prison and a fine in July 2015 for alleged defamation. He remains free pending appeal.
- **Bangladesh**, where journalist Probir Sikdar was held for three days in August 2015 after being accused of defaming a government minister in a Facebook post. Released on bail, the investigation in this case is continuing.
- **Iceland**, where civilians Anna Sesselja Sigurðardóttir and Emil Thorarensen, were each sentenced to fines, the paying of damages and legal costs in two separate cases brought against them by the Icelandic State Prosecutor on behalf of officials they had criticized on Facebook.
- **Iran**, where cartoonist Atena Farghadani was sentenced to 12 years and nine months imprisonment, on 19 May 2015 on charges including 'insulting members of parliament through paintings'
- **Thailand**, where editor Alan Morison and journalist Chutima Sidasathian, could each receive a prison term of up to five years and a fine of up to 100,000 Baht (approximately 3,000 USD) for the re-publication of a Reuters news article claiming some members of the naval forces to be benefiting from the trafficking of Rohingya refugees from Myanmar. On 23 February 2015 student activists Patiawat Saraiyaem and Pornthip Munkong were each sentenced to two and a half years in prison for violating Thailand's "lèse-majesté" law in a play they wrote.
- **Turkey**, where writer, journalist and documentary filmmaker Can Dündar is on trial for criminal defamation in a case brought by the President of Turkey Recep Tayyip Erdoğan and his son Bilal Erdoğan. The case relates to a series of articles that

Dündar wrote in July 2014, in which he questioned the handling of a dropped corruption investigation.

However, in recent months some courts – including **Turkey's** Constitutional Court which ruled in July 2015 ruling by that a journalist's suspended prison sentence for “insulting” public officials via the media violated the freedom of expression, as well as several courts in Africa - have taken a critical view of the use of such laws.

The African rulings follow a resolution adopted in 2010 by the African Commission on Human and Peoples' Rights urging states to repeal criminal defamation; a 2013 resolution by the Pan African Parliament also called for similar legal reform.

The following year, on 12 June 2014, the **Zimbabwe** Constitutional Court hearing a criminal defamation charge case brought by Munyaradzi Kereke, a member of the ruling Zanu PF party against Nevanji Madanhire, editor of The Standard, and reporter Nqaba Matshazi, ruled that the law violates a constitutional safeguard on freedom of expression and that defamation cases should be brought before civil courts. The two had been arrested and released on bail.

In December, 2014, a more wide-ranging judicial decision was taken. The African Court of Human and Peoples' Rights, whose judgments are binding on African Union member states, handed down a judgment in a case against the **Burkina Faso** government brought by editor Lohé Issa Konaté who had been imprisoned for a year on a criminal defamation charge. It was the court's first judgment on a free speech issue but it was very firm in rejecting the conviction of Konate.

The court ruled that imprisonment for defamation violates the right to freedom of expression and that such laws should only be used in restricted circumstances. It ordered Burkina Faso to change its criminal defamation laws -- like those in many African countries, a relic of colonialism and incompatible with an independent, democratic Africa because they violate a core civil and political right and restrict and deter debate on matters of public interest.

The judgment has so far been ignored by Burkina Faso and other member states of the African Union though its delivery by this court is binding on them to review their criminal defamation laws. This judgment had the backing of 18 vocal civil society organisations – including PEN International, along with PEN Algeria, PEN Nigeria and PEN Malawi - which were granted an amicus curiae application in support of the journalists. Their calls for the repeal of criminal defamation and insult laws have gone unheeded.

Despite these developments, campaigns against the legislation by the World Association of Newspapers and News Publishers (WAN-IFRA), which adopted the 2007 Declaration of Table Mountain calling for the abolition by African nations of insult and criminal defamation laws and other restrictions on the operations of the media, and by Pansy Tlakula, the African Union's Special Rapporteur on Freedom of Expression in Africa, have had limited success.

#### **The Assembly of Delegates 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.

It also directs a special appeal to African Union member states to abide by the ruling of the African Court of Human and Peoples' Rights in the Konaté case by amending their criminal defamation and insult laws.