



CRITICS ARE NOT CRIMINALS

COMPARATIVE STUDY OF CRIMINAL DEFAMATION LAWS IN THE AMERICAS

IN PARTNERSHIP WITH



**Debevoise
& Plimpton**



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CONTENTS

FOREWORD	09
INTRODUCTION	10
EXECUTIVE SUMMARY	13
REGIONAL JURISPRUDENCE	17
NORTH AMERICA	20
Canada	21
Mexico	23
United States	25
CENTRAL AMERICA	30
Belize	31
Costa Rica	33
El Salvador	36
Guatemala	39
Honduras	41
Nicaragua	45
Panama	48
CARIBBEAN	52
Antigua and Barbuda	53
Bahamas	55
Barbados	58
Cuba	59
Dominica	62
Dominican Republic	64
Grenada	67

FOREWORD

In a free and open society, the function of journalists and activists is to hold their governments accountable. Criminal defamation and insult laws not only violate international freedom of expression standards but can also severely undermine this role and stifle public debate. Journalists should be able to do their work without fear but are instead vilified and subject to harsh sanctions under these laws. In 2014 alone, over 200 journalists were imprisoned around the world for reporting on matters of public interest, with the vast majority being charged under anti-state or defamation laws.

Despite a growing consensus that criminal defamation laws should be abolished, there has been an alarming resurgence of their use in the Americas. From North America to South America, over two-thirds of the governments in the region routinely use these laws to silence dissent and to deprive citizens of information on matters of public interest. Even in countries where criminal defamation laws are not actively enforced, their existence continues to have a significant impact on the willingness and ability of individuals and media organizations to discuss key issues, posing as a very tangible threat to freedom of expression.

At the Thomson Reuters Foundation, we stand for free, independent journalism, human rights, and the rule of law. This publication makes a notable contribution to our understanding of the chilling effect that criminal defamation laws can have on freedom of expression in the Americas, and it highlights best and worst practices that can guide advocacy efforts for legal reform. The report surveys the existence and enforcement of criminal defamation laws and other laws criminalizing or restricting speech across the Americas, including their application to growing methods of news dissemination such as the Internet and mobile communications.

This report is produced through a close collaboration between the Thomson Reuters Foundation, the Committee to Protect Journalists (CPJ), and a team of dedicated lawyers around the world. Debevoise & Plimpton played a leading role in producing the guide, together with Benedetti & Benedetti, Brigard Urrutia, Cariola Díez Pérez-Cotapos & Cía. Ltda, Díaz Durán & Asociados, Estudio Rodrigo, Elias & Medrano, Medina, Rosenthal & Asociados, Molina & Asociados, Norton Rose Fulbright, Quirós Abogados, Rose & Co. Attorneys at Law, and Rusconi, Medina & Asociados. We are extremely grateful to the contributing teams of lawyers who tirelessly and generously committed their time and expertise to make this report possible.

We are hopeful that this publication will serve as a useful tool to raise public awareness around criminal defamation, and to effectively support journalists, legislators, advocates and citizens in the fight to end this repressive trend.

TrustLaw Team

INTRODUCTION



After three decades of democratization, the current state of freedom of expression in Latin America is undoubtedly more open than in the period of military rule. But the legislative and judicial reforms necessary to institutionalize freedom of expression are still widely lacking. In this new report—prepared by Debevoise & Plimpton LLP for the Committee to Protect Journalists (CPJ) in collaboration with the Thomson Reuters Foundation—we found that 32 of 33 countries in the Americas penalize defamation with criminal laws that are often invoked to punish critical journalists and create a chilling effect for the press.

CPJ has closely followed the state of criminal defamation laws in the region for over a decade. In 2000, we began an intense campaign to eliminate these laws in the Americas. These efforts were widely successful and helped shape an emerging international consensus, including within the Inter-American system, that criminal defamation violates international freedom of expression standards and led to the decriminalization of many aspects of defamation in several countries.

In the last few years, however, we have documented a troubling resurgence of the use of these outdated provisions to target critical journalists. It has become clear that, even if infrequently applied, the continuing existence of these laws represents a lurking danger to free expression. Though we knew the problem was widespread, a comprehensive analysis of the situation was lacking. With that in mind, we partnered with the Thomson Reuters Foundation to utilize the legal expertise of their pro bono network to document the extent and nature of criminal defamation in the region.

Despite the emerging consensus that criminal defamation laws violate international freedom of expression standards, the continued use of such provisions has deterred the aggressive reporting necessary for robust debate in a free and open society. CPJ research has found that politicians and public officials are the actors who most often target and seek to silence their critics with these laws. International jurisprudence has found that public officials, because of their role, should be subjected to a greater public scrutiny from society.

International human rights instruments and a growing body of international legal opinion clearly state that defamation laws can have a chilling effect on speech, hampering the right to freedom of expression and the right to be informed. Laws that criminalize speech that do not incite violence are incompatible with the right to freedom of expression as established under Article 13 of the American Convention on Human Rights. As the Inter-American Commission on Human Rights stated in a landmark 1994 decision, “Considering the consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence.”

Yet 21 years later, Jamaica is the only country in the hemisphere that has entirely repealed criminal defamations provisions, according to the findings of this report.

This report, which is aimed as a resource to inform journalists of the legal risks for their work, shows that the use of criminal defamation provisions is still widespread throughout the hemisphere. Though imprisonment is rare, the fact that these laws are frequently used as a

way to intimidate journalists and to limit the debate on issues of national interest is a matter of concern. CPJ will continue to actively campaign for the elimination of criminal defamation laws that seek to equate critics with criminals.

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EXECUTIVE SUMMARY

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Laws that permit journalists to be prosecuted criminally for the content of their reporting are considered to present a hazard to freedom of the press and to the right of citizens to be informed. As the Inter-American Commission on Human Rights (“IACHR”) described in its 1994 Annual Report, such laws have an “inevitable chilling effect . . . on freedom of expression.”¹ Indeed, there is a growing international consensus among tribunals and authorities around the world, including the IACHR, the United Nations and the European Court of Human Rights (“ECHR”), that criminal punishment is a disproportionate penalty for defamation and that only speech that creates a direct threat of lawless violence should ever give rise to criminal liability. For example, criminal defamation has been held by the ECHR to be a “disproportionate interference with the exercise of . . . freedom of expression,” as civil damages are sufficient to redress harm to reputation.²

Within the Americas, Article 13 of the American Convention on Human Rights leaves States limited authority to restrict the right to freedom of expression. In particular, a State may impose liability for defamation only “to the extent necessary to ensure . . . respect for the . . . reputations of others.”³ Under Article 13, any restriction on free expression must be “required by a compelling governmental interest” and “framed as not to limit the right protected by Article 13 more than is necessary.”⁴ Furthermore, the IACHR’s Special Rapporteur for Freedom of Expression has described “the paralyzing effect or the possibility of self-censorship caused by the mere existence of laws that provide criminal penalties for those who exercise the right to freedom of expression in such a context.”⁵

This report endeavors to present a survey of the status of criminal defamation laws and other laws criminalizing or restricting speech across the Americas. Defamation may be defined generally as the act of harming the reputation of another by making a false statement to a third person, although its specific definition and application varies under the laws of each country and, in the United States, under the laws of each state. Further laws criminalizing speech in the region include, for example, libel (defined generally as a defamatory statement expressed in a fixed medium, including pictures, signs, or electronic broadcasts), calumny (often defined as a false allegation that another person has committed a specific crime), and, in certain countries, “*desacato*” offenses (often translated as “contempt,” or “insult” and defined as to include insulting or offending the honor of the state or state officials). Most countries included in this report still have laws criminalizing some or all of these offenses, even when those laws are not actively enforced. This report further describes the application of these laws to the Internet and mobile communications media, which are growing increasingly common as a method of news dissemination worldwide.

Ultimately, in spite of the speech protections consecrated in the American Convention on Human Rights and reinforced within recent cases before the IACHR, criminal prosecutions for defamation remain frequent in many countries across the Americas.⁶ While in some countries one can see a positive trend of governments that have taken the initiative to amend or abolish their criminal defamation laws, there is no current trend toward completely decriminalizing these laws in the Americas. Most countries included in this report currently have a number of different criminal laws that might restrict freedom of expression such as libel, slander, defamation and calumny, punishable with fines and in some instances

imprisonment. Criminal defamation laws are enforced and have resulted in imprisonment in Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Grenada, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, the United States, Uruguay, and Venezuela. Currently, the only country with no criminal defamation laws is Jamaica, which recently reformed its criminal laws to this effect; both Mexico and the United States have no criminal defamation laws at the federal level only. Criminal defamation laws in most of the countries in the Americas also apply, at least on the face of the law, to internet and mobile communications.

Until criminal defamation laws are eradicated, they may be employed to intimidate journalists. While some countries within the Americas have yet a long way to go towards eliminating their laws criminalizing defamation and other speech, such as Honduras, Cuba, Brazil, Ecuador, Peru and Venezuela, a number of countries have made strides in this area recently. Jamaica, Mexico, the U.S., El Salvador, Guatemala, Honduras, Nicaragua, Panama, St. Lucia and Argentina, for instance, should be commended for undertaking improvements, especially through the repeal and amendment of key provisions within their penal codes that restricted the freedom of speech.

1. North America

In North America, only Canada still has criminal laws restricting the freedom of expression on a federal level. While Mexico and the U.S. have no federal defamation laws, certain states within these two countries still criminalize defamation. However, the enforcement of criminal defamation laws is rare in Canada and in certain U.S. states. In Mexico, records of judicial proceedings are not publicly available. Therefore, it is not possible to ascertain the extent to which local defamation laws are being enforced. But the availability of very limited public news about criminal charges against reporters suggests that there are not many cases brought against journalists in Mexico under these local defamation laws. The language in the criminal defamation laws of all three North American countries imply a broad application to Internet and mobile communications. Overall, there is a positive trend toward the abolition of criminal defamation laws, particularly in the U.S. and in Mexico, where such laws have been repealed in some local states.

2. Central America

All seven Central American countries currently have a variety of different criminal laws restricting freedom of expression such as libel, defamation and calumny, that either impose fines or imprisonment. Criminal defamation laws have been applied in recent years in five Central American countries (Costa Rica, Guatemala, Honduras, Nicaragua and Panama) and lawsuits are often brought against journalists in those countries. In the other two Central American countries (Belize and El Salvador), criminal prosecution of journalists has been rare in recent years. In six out of the seven Central American countries, the criminal defamation laws

apply to Internet and mobile communications. Only in Panama is there no provision expressly extending criminal defamation laws to the Internet and mobile communications. While six Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama) have either amended or abolished certain criminal defamation laws, there is no current trend toward further decriminalizing these laws in Central America.

3. The Caribbean

All Caribbean countries except Jamaica currently have a variety of different criminal laws restricting the freedom of expression. However, criminal defamation laws have been very rarely enforced in most of these countries (Antigua and Barbuda, Bahamas, Barbados, Dominica, Jamaica, St. Lucia and Trinidad and Tobago). In Cuba, Dominican Republic and Haiti, defamation laws continue to be enforced. In nine Caribbean countries (Barbados, Cuba, Bahamas, Dominica, Dominican Republic, Grenada, St. Lucia, Haiti and Trinidad and Tobago), the criminal defamation laws apply to the Internet and mobile communications in all countries except Antigua and Barbuda, Cuba and Jamaica. Other than Jamaica, which recently decriminalized defamation, and St. Lucia, there is no current trend toward decriminalizing criminal defamation laws in the Caribbean.

4. South America

All thirteen South American countries currently have a variety of different criminal laws that might be used to restrict freedom of speech, including libel, slander, defamation and calumny, which impose either fines or imprisonment. Criminal defamation laws have been enforced in most of these countries and lawsuits have been brought against journalists. In French Guiana and Guyana, criminal prosecution of journalists has been rare in recent years. In all thirteen South American countries, the criminal defamation laws appear to apply to the Internet and mobile communications. While seven South American countries (Argentina, Bolivia, Paraguay, Peru, Brazil, Uruguay and Guyana) show progress toward amending or abolishing certain criminal defamation laws, there is no trend toward decriminalizing these laws in other South American countries.



REGIONAL JURISPRUDENCE

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Below is a summary of the key Inter-American Court of Human Rights (“IACtHR”) decisions rendered on issues of criminal defamation since 2001. Although holdings from the IACtHR are not controlling in all jurisdictions in the Americas, they provide useful guidance on this type of case and set important precedents for further application of the laws across the region.

1. Carlos and Pablo Mémoli v. Argentina

In what has been viewed as a setback, the IACtHR ruled in 2013 for the first time that a criminal sanction for defamation did not affect freedom of expression as recognized under Article 13 of the American Convention on Human Rights.⁷ This case arose from a series of articles published in 1990 in the newspaper *La Libertad*, in which the paper denounced certain irregularities in the sale of public vaults in a local cemetery by a mutual benefit association. The directors of the mutual company sued Carlos and Pablo Mémoli on criminal defamation charges. In 1994, Pablo and Carlos received suspended prison sentences of five months and one month, respectively. Further civil defamation claims have been filed against the Mémolis and their assets were seized. After exhausting domestic remedies in the Argentine judiciary, the Mémolis filed a claim before the IACtHR.⁸ The court, in a sharply divided 4-3 decision, found that the convictions did not violate the freedom of expression. This decision runs counter to the IACtHR’s ruling in *Kimel v. Argentina* (Judgment of May 2, 2008)⁹ where it had found that Argentina’s defamation laws used to convict news publishers were incompatible with the American Convention on Human Rights.

2. Herrera-Ulloa v. Costa Rica

In 2004, the IACtHR overturned a criminal defamation sentence imposed against Costa Rican journalist Mauricio Herrera Ulloa. The court held that such a conviction violated the freedom of thought and expression protected under Article 13 of the American Convention on Human Rights. In particular, the Court found that given the particulars of this case there was a public interest in exposing corruption, and that public officials and other individuals who “enter the sphere of public discourse” had to tolerate a greater “margin of openness to a broad debate on matters of public interest.”¹⁰

3. Ricardo Canese v. Paraguay

Also in 2004, the IACtHR ruled that the criminal defamation conviction and prosecution against Paraguayan politician Ricardo Canese violated Article 13 of the American Convention on Human Rights.¹¹ During the 1993 presidential campaign in Paraguay in 1993, candidate Ricardo Canese made statements to the media against candidate Juan Carlos Wasmosy, whom he accused of being involved in irregularities related to the construction of a hydroelectric plant. Mr. Canese was prosecuted and sentenced to four months in prison. The Inter-American Court found that the conviction was disproportionate and violated Canese’s right to freedom of expression. The Court also underscored the importance of freedom of expression during election campaigns, as people should be fully entitled to raise questions about candidates so that voters can make informed decisions.¹²

4. *Alejandra Matus v. Chile*

In 1999, *El Libro Negro de la Justicia Chilena* was released in Chile, written by journalist Alejandra Marcela Matus Acuña and published by the Planeta Publishing Company. On that same date all copies of the aforementioned book were confiscated, under judicial proceedings instituted for violation of the State Security Law of Chile. In June 1999, two executives at the *Planeta* Publishing Company in Chile were arrested as part of these proceedings, although charges were later dropped. Journalist Matus fled the country. In 2001, CPJ filed an *amicus curiae* brief in this case arguing that that journalists should never face criminal liability for what they write, broadcast, or publish.¹³ The Commission ruled that she was the “victim of censorship on account of her ‘Black Book of Chilean Justice’, and that her books were seized by judicial order and were out of circulation for more than two years.” These actions, the Commission opined, violated Article 13 (freedom of thought and expression) and Article 21 (right of property) of the American Convention.¹⁴ In 2005, the IAAtHR ruled in favor of Alejandra Matus.

NORTH AMERICA —



I. CANADA

A. Criminal Laws Restricting Freedom of Expression

Despite frequent criticism and infrequent application, Canada's Criminal Code continues to contain provisions criminalizing both blasphemous libel¹⁵ and defamatory libel.¹⁶ Section 298(1) of the Code describes "defamatory libel" as a "matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published."¹⁷ This Section further provides that a defamatory libel may be expressed directly or by insinuation or irony "in words legibly marked on any substance or by any object signifying a defamatory libel otherwise than by words." A defamatory libel is punishable by up to two years in prison, or up to five years where the person "publishes a defamatory libel that he knows is false."¹⁸

In addition to general defenses (*e.g.*, duress) available to defendants, the Criminal Code establishes a number of defenses against claims of defamatory libel, including:

- Absolute privilege, which normally applies to the communication between state officials ("an official communication relating to state affairs, including commercial matters, made by one officer of state to another in the course of his official duty")¹⁹ and also includes publishing and fair reports of the proceedings of the courts or parliamentary papers;²⁰
- Qualified privilege, if the publication was invited or necessary, provides answers to inquiries or gives information to interested persons;²¹
- "Public benefit," which is when potentially libelous information is published "on reasonable grounds" believed to be true and relevant to any subject of public interest "the public discussion of which is for the public benefit";²²
- Fair comment on a public person or a work of art;²³
- In circumstances where there is an "invitation" or "necessity" that causes the publication of the defamatory matter. This arises when a person publishes defamatory matter "(a) on the invitation or challenge of the person in respect of whom it is published," or (b) if "it is necessary to publish in order to refute defamatory matter published in respect of him by another person," and "if he believes that the defamatory matter is true and it is relevant to the invitation, challenge or necessary refutation, as the case may be, and does not in any respect exceed what is reasonably sufficient in the circumstances;"²⁴ and

- Publication in good faith for the redress of a wrong (when publication is for “the purpose of seeking remedy or redress for a private or public wrong or grievance from a person” who is obliged—or is reasonably believed to be under an obligation—to remedy or redress the wrong or grievance).²⁵

B. Enforcement of Criminal Defamation Laws

Canada’s criminal defamation laws are extremely rarely enforced, and practically never against journalists. However, in recent years, there have been a few criminal prosecutions under these laws.

One example is an ongoing prosecution against the Canadian Broadcasting Corporation (CBC) and three of its reporters, who were accused in a private criminal complaint by Peter Nygard, a Canadian fashion icon, of defamatory libel and publishing a defamatory libel knowing it to be false when they produced and aired a documentary about Nygard in April 2010.²⁶ Mr. Nygard filed his criminal libel complaint in 2011. In May 2013, provincial court Judge Sid Lerner ruled that there was sufficient evidence for the private prosecution to proceed and issued a summons against the accused in a private hearing before the judge, which was sealed and may not be disclosed.²⁷ While the current status of this case is unknown, such a criminal proceeding is very unusual for Canada.

It is worth noting that some Canadian provinces have refused to enforce the defamatory libel provision of the Criminal Code at all due to its questionable constitutionality. For example, in early 2010, there was an attempt to file criminal libel charges in New Brunswick against an online blogger for online statements against police.²⁸ However, such charges were dropped after New Brunswick’s Justice Department advised that it would not be in a position to seek a conviction in this case because it believed Canada’s criminal libel law to be unconstitutional.²⁹

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

The language contained in Criminal Code Section 299 implies a broad application of Canada’s criminal defamation laws, without making any distinction between media so long as the libelous information was exhibited in public, or it was caused to be read or seen, or shown to (or intended to be shown to), the person whom it defames or any other person.³⁰ Among a very limited number of reported cases, the 2012 conviction of an Ottawa restaurant owner for publishing on the Internet defamatory materials against a restaurant reviewer is indicative of a potentially broad application of the defamatory libel to Internet and mobile communications.³¹

D. Status of Criminal Defamation Laws

In 1984, in the wake of the adoption of the Canadian Charter of Rights and Freedoms in 1982, the Law Reform Commission of Canada published Working Paper 35 on Defamatory Libel, advocating a complete abolition of defamatory libel from the Canadian Criminal Code. The Commission specifically concluded that “there should be no offence of defamation in the new

Criminal Code or elsewhere.”³² However, the 1985 version of the Criminal Code modified, but did not eliminate, this archaic criminal offense.

There have been consistent calls for the abolition of criminal defamation and courts in several provinces of Canada have found that it violates the Canadian Charter of Rights and Freedoms.³³ The Canadian Supreme Court, however, found criminal defamation to be consistent with the requirements of the Charter, so long as the action requires proof “beyond a reasonable doubt that the accused intended to defame the victim” (emphasis in original).³⁴ However, given the Supreme Court’s recent landmark rulings in civil defamation cases, which established a new important defense of “responsible communication on matters of public interest,”³⁵ there is a renewed hope that the highest court in Canada will also find the defamatory libel provision to be inconsistent with the basic principles of the Canadian Charter of Rights and Freedoms.

II. MEXICO

A. Criminal Laws Restricting Freedom of Expression

Mexican law does not contemplate “*desacato*” (that is, “contempt”) criminal offenses, and defamation was repealed as a federal offense in 2007. However, at a local level, nine out of the thirty-two Mexican states still criminalize defamation.³⁶ While the precise provisions of such laws vary from state to state, the elements of the offense are almost identical. For example, the Criminal Code for the state of Nuevo León contains representative language:

Article 344. Defamation consists of communicating deceitfully, to one or more persons, the imputation that is made to another person or entity, in the cases set forth by law, of a true or false, determined or undetermined fact, which can cause dishonor, discredit, prejudice, or expose that person to the despise of someone.

The criminal codes of these nine states set forth a range of prison sentences and/or fines, from which a judge must choose the exact punishment on a case-by-case basis. The incarceration periods vary from state to state but, in general, the maximum prison terms range between two and three years. Specifically, the sentencing ranges are: in Baja California and Yucatán, from three days to two years;³⁷ in Baja California Sur, from one to three years;³⁸ in Guanajuato, from six months to two years;³⁹ in Hidalgo and Zacatecas, from three months to two years;⁴⁰ in Nayarit, from two months to two years⁴¹ and, in Nuevo León and Tabasco, from six months to three years.⁴²

In addition to general defenses (*e.g.*, duress) available to defendants, it is possible to challenge the law’s constitutionality on the grounds that it breaches the right to freedom of expression consecrated in the Mexican Constitution. Such a challenge would be pursued through an *amparo* action, in which the complainant alleges the violation of his or her constitutional rights by an authority. The *amparo* complaint challenges the constitutionality of the law, either on its face or as applied in the specific case.

B. Enforcement of Criminal Defamation Laws

In Mexico, records of judicial proceedings are not available to the public, with the exception of certain Supreme Court and federal court decisions. Thus, it is not possible to ascertain the full extent to which local defamation laws are being enforced or if journalists have been threatened with criminal charges. However, threats and proceedings against journalists usually cause strong reactions in the Mexican media. The very limited number of news articles about reporters being accused of defamation or other criminal charges therefore suggests that there have been very few of these cases over the past five years.

However, in April 2013, journalist Martín Ruiz Rodríguez was detained after Ubaldo Velazco Hernández, a government official in the state of Tlaxcala, accused him of defamation. Velazco Hernández alleged that he felt insulted when Ruiz called him a “mediocre old man” in his editorial column in the local Internet publication *e-consulta*. The official allegedly suffered “moral damage” because of the publication and had to seek psychological help as a result. The local authorities detained Ruiz for 13 hours and released him after he posted bail.⁴³ Information regarding the outcome of these proceedings has not yet been released.

In May 2009, journalist Simon Tiburcio was detained for more than 20 hours and then accused of defamation and calumny (that is, misrepresenting someone’s words in a way meant to injure that person) by the Mayor of Alvarado, a small community in the state of Veracruz. Apparently the Mayor’s accusation was in retaliation for the publication of a caricature of the Mayor in a monthly paper.⁴⁴ Shortly thereafter, the charges were dropped.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Although the text of the defamation offense varies from state to state, it generally requires the offender to “communicate a statement to one or more persons.” The laws do not specify the manner in which the communication must be made and may therefore include Internet and mobile communications.

D. Status of Criminal Defamation Laws

In 2007, Mexico reformed its Federal Criminal Code to abolish defamation as a criminal offense.⁴⁵ Therefore, defamation charges may currently only be brought as a civil offense under the Federal Civil Code, with remedies consisting of monetary damages and the correction of erroneous information.⁴⁶ Therefore, a journalist cannot face criminal charges with prison time for defamation at the federal level.

Additionally, the federal reform propelled similar changes among many Mexican states. Of Mexico's 32 states,⁴⁷ 23 have already reformed their criminal codes to repeal the defamation offense. These states are: Aguascalientes, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Distrito Federal, Durango, Estado de México, Guerrero, Jalisco, Michoacán, Morelos, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala and Veracruz. In addition, the legislature of Baja California Sur is currently discussing a reform to its criminal code that would repeal defamation and libel as criminal offenses.⁴⁸

III. United States

A. Criminal Laws Restricting Freedom of Expression

There are no criminal defamation laws at the federal level in the United States. In addition, the common law cause of action for criminal defamation was held to be unconstitutionally vague in 1966.⁴⁹

Twenty-four states and the U.S. Virgin Islands do have criminal defamation provisions, but the United States Supreme Court has limited the application of such statutes, requiring that the defendant's intent rises to a standard of "actual malice" where the plaintiff is a public figure, and prohibiting the criminal prosecution of true speech.⁵⁰

Additionally, many of these state statutes have been declared unconstitutional or are never enforced, even if they have not been repealed and thus still remain part of that state's criminal code. Further, many of the statutes that have not been reviewed by the state's courts would likely be found unconstitutional or significantly limited in application if an actual case arose under these statutes today.

The 25 state and territorial statutes are summarized in the table below. The shaded rows indicate the states where statutes have been declared unconstitutional or are not enforced yet remain on the books. The maximum penalty typically includes a jail term of one year or less, with the exception of a specialized statute in Texas that criminalizes the making of false statements about the financial condition of a credit union, which may be punishable by a prison term of up to ten years.⁵¹

STATE	CITATION	SPECIFIC CONDUCT COVERED	MAX PENALTY
Alabama	Ala. Code § 13A-11-160	Publication of libel tending to provoke breach of peace	\$500 and/or six months
Florida	Fla. Stat. § 836.01, <i>et seq.</i>	Requires publication, except for defamation concerning the financial condition of a bank or similar institution; also criminalizes anonymous distribution of "hate" literature	\$1,000 and/or one year
Georgia ⁵²	O.C.G.A. § 16-11-40		\$1,000 and/or one year
Idaho	Idaho Code §18-4801, <i>et. seq.</i>		\$5,000 or six months
Illinois	720 I.L.C.S. 300/1	Relating only to defamation of a financial institution	\$2,500 and/or one year
Kansas	Kan. Stat. § 21-6103		\$2,500 and/or one year
Kentucky	KRS 432.280	Technically a contempt statute that criminalizes defamatory statements about a judge	N/A
Louisiana ⁵³	La. Rev. Stat. § 14:47		\$500 and/or six months
Massachusetts	ALM GL ch. 272, § 98C	Criminalizes only defamation of a group on the basis of race, color or religion	\$1,000 and/or one year
Michigan	Mich. Comp. Laws § 750.370		\$1,000 and/or one year
Minnesota	Minn. Stat. § 609.765		\$3,000 and/or one year
Mississippi ⁵⁴	Miss. Code Ann. § 97-3-55		At court's discretion
Montana ⁵⁵	Mont. Stat. § 45-8-212		\$500 and/or six months
Nevada ⁵⁶	Nev. Rev. Stat. Ann. § 200.510		\$2,000 and/or one year
New Hampshire	N.H. Rev. Stat. § 644:11		\$1,200 / no jail

STATE	CITATION	SPECIFIC CONDUCT COVERED	MAX PENALTY
New Mexico ⁵⁷	N.M. Stat. Ann. § 30-11-1		\$1,000 and/or one year
North Carolina	N.C. Gen. Stat. § 14-47	Relates only to submission of defamatory material to, and publication by, news media	\$1,000 and/or 60 days
North Dakota	N.D. Cent. Code § 12.1-15-01		\$3,000 and/or one year
Oklahoma ⁵⁸	Okla. Stat. tit. 21, § 771, <i>et seq.</i>		\$1,000 and/or one year
South Carolina	S.C. Code Ann. § 16-7-150		\$5,000 and/or one year
Texas	Tex. Finance Code §§ 59.002; 89.101; 119.202; 122.251; 199.001	Relating only to defamation impugning the financial condition of different types of financial institutions	\$10,000 and/or two years (as to bank, savings and loan association, savings bank, or state trust company); \$10,000 and/or ten years (as to credit union)
Utah	Utah Code § 76-9-404		\$1,000 and/or six months
U.S. Virgin Islands	14 V.I. Code § 1171, <i>et seq.</i> , and 14 V.I. Code § 1180, <i>et seq.</i>		\$500 and/or one year (180 days for slander)
Virginia	Va. Code § 18.2-417		\$500 / no jail
Wisconsin	Wis. Stat. § 942.01		\$10,000 and/or nine months

In addition to general defenses available to defendants, the criminal codes of these states and territories provide a number of defenses against defamatory libel, including:

- Timely retraction/correction (*see, e.g.*, Fla. Stat. § 836.08 [also requiring that the underlying libel be published as a result of a good faith mistake]);
- Truth (*see, e.g.*, Idaho Code §18-4803 [also requiring that initial publication be for a justifiable purpose]; Kan. Stat. § 21-6103);
- Privilege (*see, e.g.*, Minn. Stat. § 609.765 [as a result of reporting a judicial or legislative proceeding]; N.D. Cent. Code § 12.1-15-01 [as a result of a duty or entitlement to give and receive the allegedly defamatory information]; Okla. Stat. tit. 21, § 772 [as a result of the discharge of an official duty]); and
- Provocation (*see, e.g.*, Va. Code § 18.2-417).

Because the above statutes, in many cases, remain on the books even after being held unconstitutional by state courts, the most effective defense in many cases is to question the constitutionality of the statute, either on its face (that is, asking that the entire statute be found to be unconstitutional) or as applied in the specific case. If the defendant cannot successfully make the case that the statute is unconstitutional on its face, he can still argue that, as applied in his case, it does not meet the criteria set forth by the United States Supreme Court in *Garrison*: *first*, that the statute must recognize truth as a defense; and *second*, that it must require actual malice as the criminal intent.⁵⁹ Moreover, even if the statute in question (such as, for example, that of Utah) was rewritten to conform to constitutional requirements, the defendant, upon conviction, may always argue that the state failed to prove either of those two elements beyond a reasonable doubt (the standard required for the state to prove in a criminal prosecution).

B. Enforcement of Criminal Defamation Laws

Even those state criminal defamation laws that still exist are rarely applied. When they are applied it is generally not against journalists, nor are journalists generally threatened with prosecution. Further, on the rare occasions that individuals are charged, district attorneys have declined to prosecute,⁶⁰ and even when cases are brought, courts have dismissed them on constitutional grounds.⁶¹ Nonetheless, simply keeping statutes on the books as part of the state's criminal code means that the danger of arrest remains a reality.⁶²

No criminal defamation cases have been reported involving journalists within the past five years. In fact, the most recent such case took place more than a decade ago.⁶³ In *State v. Carson*, the editor and publisher of a free newspaper in the Kansas City, Kansas area were charged with misdemeanor libel for articles that they published suggesting that the mayor

and her husband, a judge, did not live in the county, as required by law. According to one report, the evidence at trial included testimony by neighbors of the mayor and the judge establishing that they lived where they claimed to live.⁶⁴ It was reportedly the first conviction of a journalist under such a statute in nearly 30 years.⁶⁵ Both men were fined \$3,500, but were not sentenced to jail.⁶⁶

One recent case, though not brought against a newspaper or journalist, involved a private citizen's attempts to cause a newspaper to report on a particular matter.⁶⁷ In *Simmons v. City of Mamou*, the citizen, Bobby Simmons, tipped the *Ville Platte Gazette*, via email, about the possible arrest of a local police chief when he attempted to prevent state police from testing the blood alcohol content of one of his officers when arrested for driving while under the influence of alcohol.⁶⁸ Once the paper began making inquiries, the police chief, Greg Dupuis, sought and obtained a subpoena forcing the *Gazette* to turn over the emails, and then obtained an arrest warrant for Simmons on the charge of criminal defamation.⁶⁹ While it appears that Simmons was not formally charged, he was held in jail overnight until he was able to post bond to be released.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

No law specifically extends or limits criminal defamation in the context of Internet or mobile communications. The few instances in which people have been prosecuted under criminal defamation statutes include factual scenarios in which the comments at issue were made over the Internet.⁷⁰

D. Status of Criminal Defamation Laws

Criminal defamation laws are generally regarded with disfavor in the United States. Several states have repealed these statutes in the last decade, among them Arkansas,⁷¹ Colorado⁷² and Washington.⁷³ Overall, these statutes have dwindled in number over the past 20 years. Although the trend continues, and public advocacy on behalf of repeal is heard regularly, at the current moment there appears to be no particular state statute being considered for repeal.⁷⁴

CENTRAL AMERICA



I. BELIZE

A. Criminal Laws Restricting Freedom of Expression

1. Libel and Defamation

According to the Belize Libel and Defamation Act, a criminal prosecution of “any proprietor, publisher, editor or any person responsible for the publication of a newspaper for any libel published therein” may occur upon order of a judge.⁷⁵ Libel is not defined in the Act, and the punishment for criminal libel is not specified. However, the Supreme Court of Belize has defined libel as the publication of defamatory words about an individual which may impugn or injure a person’s reputation.⁷⁶

A defendant may plead as a defense that the libel was published in the newspaper without the required intent (that is, either actual malice or gross negligence) and that the defendant has published an apology in the newspaper before commencement of the action or “at the earliest opportunity afterwards.”⁷⁷ According to the Belize Supreme Court (Civil Procedure) Rules, a defendant may argue that the allegedly libelous material was true, if the words were (a) statements of fact, (b) “fair comment on a matter of public interest,” or (c) “expressions of opinion.”⁷⁸

A “fair and accurate report” published in a newspaper of the proceedings of a court, a public meeting, or a government meeting (where the newspaper reporter was admitted) shall be privileged (i.e. protected from prosecution), unless it is proven that the report was published or made maliciously.⁷⁹

However, these provisions do not protect from prosecution “the publication of any matter not of public concern and the publication of which is not for the public benefit.”⁸⁰ The law also does not allow the publication of any blasphemous or indecent matter.⁸¹ The privilege defense is not available if it is proven that the defendant was requested to print a “statement by way of contraction or explanation” and refused to publish it.⁸²

2. Seditious Libel

“Seditious libel” is also a crime in Belize under the Criminal Code.⁸³ It is defined as “the publication, by print, writing, painting or by any means otherwise than solely by gestures, spoken words or other sounds, of any matter with a seditious purpose.”⁸⁴ “Seditious purpose” is then defined as “a purpose to excite any of Her Majesty’s subjects to the obtaining by force or other unlawful means of an alteration in the laws or in the form of Government, or to the commission of any crime punishable under the first section of this Title [use of armed force against the government] or punishable under any law relating to treason.”⁸⁵ Seditious libel is punishable by imprisonment of up to two years.⁸⁶

Truth is not a defense to seditious libel.⁸⁷ Nor can the grounds of absolute or qualified privilege be used as a defense.⁸⁸ However, it is lawful in Belize for someone to “endeavor in good faith to show (a) that Her Majesty or the Government of Belize have been misled or mistaken in any of their measures; or (b) that there are errors or defects in the constitution or Government of Belize as by law established or in the administration of justice.”⁸⁹

In addition, any person tried as a principal for publication of allegedly seditious materials by an agent may have the charges against himself dismissed if the principal proves that “(a) the publication was made without his authority, consent, or knowledge; (b) the publication did not arise from any want of due care or caution on his part; and (c) he did everything in his power to assist in ascertaining the identity of the person responsible for writing and publishing respectively such words.”⁹⁰

3. Defaming Her Majesty

Defaming the Queen (who remains Belize’s head of state) is a separate crime, punishable as a misdemeanor. Its scope includes “[e]very person with intent to bring Her Majesty into hatred, ridicule or contempt, [who] publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner concerning Her Majesty.”⁹¹

B. Enforcement of Criminal Defamation Laws

The above-mentioned provisions described have not been enforced in recent years. Similarly, it appears journalists have not been threatened with criminal charges.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Pursuant to the Libel and Defamation Act, criminal defamation is limited to the publication of libelous material in newspapers.⁹² It seems plausible that the statute could apply to online newspapers, although it does not appear to have been applied in this manner to date.

The seditious libel provisions also could apply to the Internet and/or mobile communications because the definition of “publish” includes “writings, drawings, pictures, photographs or images, means to distribute them to a number of persons, or exhibit them in such a way that they may be seen by persons in a public street or in any other place to which the public has access, or to sell or expose or offer them for sale in any place.”⁹³ Again, however, these provisions do not yet appear to have been applied in this manner.

D. Status of Criminal Defamation Laws

It does not appear that there has been any recent debate on decriminalizing, or otherwise amending, Belize’s defamation and libel laws.

II. COSTA RICA

A. Criminal Laws Restricting Freedom of Expression⁹⁴

1. *Insults, Defamation and Calumny*

The Costa Rican Penal Code penalizes “crimes against honor” in Articles 145, 146, 148 and 153 as private crimes (meaning that the complaint must be initiated by the affected individual).

In particular, Article 145 criminalizes insults (“*injurias*”), for which a person may be convicted if they have engaged in words or acts that offend a person’s dignity. If the offense occurs in that person’s presence or through communication directed to them, the penalty is an income-based fine, ranging from 10 to 50 days’ wages. If the offense is committed publicly, like in the press, however, the fine ranges from 15 to 75 days’ wages.⁹⁵

Defamation (“*difamación*”) is penalized by Article 146 of the Code, which provides for a penalty of 20 to 70 days’ wages where the defendant has dishonored someone else or disclosed private information sufficient to affect someone’s reputation.⁹⁶

Article 147 provides that falsely accusing someone of a crime is punishable by a fine of 150 days’ wages. This offence is known as calumny (“*calumnia*”).⁹⁷

Article 148 criminalizes insults against the reputation of a dead person with injurious or defamatory statements. The right to accuse someone of this crime is held by the decedent’s spouse, children, parents, grandchildren and siblings (with an actual blood relationship). The penalty is a fine of 10 to 150 days’ wages.⁹⁸

Finally, it is also illegal to defame a legal person (that is, a corporation) or its agents by making false statements regarding the conduct of its/their business that can seriously damage the public’s trust in the company, its agents or their creditworthiness. A person convicted of this crime faces a fine of 30 to 100 days’ wages.⁹⁹

When the relevant offense involves publication of the message through the media, the head of the media organization may also be found liable for the relevant offence, so long as that person had the required (subjective) intent.¹⁰⁰

A civil claim for damages may also be brought as part of the same action.¹⁰¹

2. Printing Press Law

Costa Rica's 1902 Printing Press Law contains provisions regarding injuries and calumny committed via print media, and sets out penalties for those crimes.¹⁰² However, Article 7 of the Law, providing for a prison term of one to 120 days for such crimes, was struck down by the Supreme Court in December 2009.¹⁰³

3. Information Crimes Law

In November 2012, the government enacted the Information Crimes Law, Law No. 9048 (also referred to in English as the "Cybercrimes Law"), which made it a crime to obtain and publish certain secret information.¹⁰⁴ One provision of this law, with a potentially grave impact on journalists, codified as Article 288 of the Penal Code, stated that

[A person] shall be punished with imprisonment of one to six years, if they improperly procure or obtain secret political information, security policies concerning the means of defense or foreign relations of the State, or affecting the fight against drug trafficking or organized crime.¹⁰⁵

However, soon after the bill's passage and in response to widespread public outcry, the government pledged that the law would *not* apply to journalists.¹⁰⁶ Following a legal challenge by journalist Randall Rivera, the Supreme Court suspended parts of the bill in 2012, including Article 288. The National Assembly then voted to repeal the "secret political information" section of the bill in April 2013.¹⁰⁷

B. Enforcement of Criminal Defamation Laws

Freedom House, an independent watchdog organization, has reported that "journalists remain vulnerable to criminal charges for defamation, with punishments including excessive fines and the placing of one's name on a national list of convicted criminals."¹⁰⁸

At the same time, however, Costa Rica's courts have taken into account the importance of distributing news in the public interest, weighed against the individual interest in protecting personal honor. At times the courts have construed the right to information broadly, such that the media may report freely, or struck down punishments deemed too harsh.

For example, in *Diputado Víquez v. Diario Extra*, a former Costa Rican member of Congress brought defamation charges against Luis Jiménez Robleto, a reporter with the San José

newspaper *Diario Extra*, based on a news story that the journalist wrote regarding alleged embezzlement. Mr. Jiménez was sentenced to 50 days in prison in March 2004, based on Article 7 of the Printing Press Law of 1902 (see above). Mr. Jiménez appealed to the Supreme Court, which overturned his conviction in 2010. As part of its review in the case, the Supreme Court struck down the Printing Press Law's provision applying prison sentences for defamation¹⁰⁹

In another case from 2010, a court in San José unanimously dismissed the criminal charges for defamation brought against Nicolás Aguilar Ramírez, a journalist for the newspaper *La Nación*. The charges were based on Mr. Aguilar's authorship of two stories in 2007 regarding the arrest of alleged criminal Ng Tse Cheong Ming by Interpol in the United States.¹¹⁰ Mr. Cheong Ming had allegedly murdered a man in San José, Costa Rica and had then fled to the United States. Mr. Cheong Ming was deported to Costa Rica, tried for the murder and found not guilty. He then brought defamation charges against Mr. Aguilar and *La Nación*, together with civil claims for large sums, based on supposedly incorrect information in Mr. Aguilar's stories. The court found that the facts published by Mr. Aguilar were true, and emphasized the journalist's lack of malice and the public-interest nature of the story.¹¹¹ Such defenses—truth and public interest—are the most likely to prove successful for journalists facing criminal charges in Costa Rica.

Constitutional challenges to criminal convictions for defamation and calumny have also proven to be successful recently. For example, a constitutional challenge brought by journalist Randall Rivera against Costa Rica's Information Crimes Law resulted in the Supreme Court temporarily suspending parts of the Law.¹¹²

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

The Penal Code provisions named above apply without exception to any form of communication.

D. Recent Amendments to Criminal Defamation Laws

The most notable amendment in recent years was the abolition of the crime of contempt of authority ("*desacato*") in 2002. The crime of *desacato* was then removed from the Penal Code by Law No. 8224 in March 2002, by revising Article 309 to read as follows:¹¹³

Article 309.- Threat to a public official.

Anyone who threatens a public official for reasons of his position, be the threat directed at the official personally or publicly, or through written, telegraphic, or telephonic communication, shall be punished by imprisonment of one month to two years.

The old version of Article 309 also punished those who “attack[ed] the honor or offend[ed] the decorum of a public official,” whereas the amended version removes this language and only sanctions “threats.” Thus, the revision effectively abolished the crime of “*desacato*.”

Further changes to Costa Rica’s law have taken place through the courts. As noted above, in December 2009 the Supreme Court eliminated prison terms from the 1902 Printing Press Law, which had previously imposed sentences of up to 120 days for defamation in print media.¹¹⁴

Finally, as noted above, in 2012, the Supreme Court suspended the application of certain provisions of the Information Crimes Law. The most problematic provision for journalists, the revised Article 288 of the Penal Code, was then removed by the legislature in April 2013.¹¹⁵

E. Status of Criminal Defamation Laws

There has been discussion within Costa Rica about abolishing criminal defamation provisions altogether, primarily driven by media entities, but this discussion has yet to result in concrete action. The norm has, instead, been for the courts to provide the media with space for expression by considering the media’s “duty to inform” to be a matter of public interest and expecting public figures to endure criticism (without that criticism engendering a crime) to a greater extent than private individuals.

III. EL SALVADOR

A. Criminal Laws Restricting Freedom of Expression

1. *Insults, Defamation and Calumny*

The El Salvador Penal Code penalizes “crimes against honor and intimacy” under Articles 177, 178 and 179.

In particular, Article 177 criminalizes calumny, providing that a person who falsely attributes the commission of, or participation in, a crime to someone is subject to a fine of 100 to 200 days’ wages. If the calumny is carried out “publicly” or repeated by the same person, the fine increases to 200 to 300 days’ wages, and if it is repeated “publicly,” the fine is 300-360 days’ wages.

Article 178 criminalizes defamation, providing that: (i) attribution of conduct or a quality to a person, who is not present, that may damage his or her reputation is punishable by an income-based fine of 50 to 120 days’ wages; (ii) defamatory statements made in public or defamatory statements made repeatedly about the same person is punishable by a fine of 120 to 200 days’ wages; and (iii) repeated “public” defamation against the same person is punishable by a fine of 240 to 370 days’ wages.

These offences can be committed not only overtly, but also through allegory, caricature, symbolism and allusion.¹¹⁶ The offense is committed “publicly” when it is carried out through printed papers or pictures or other graphic renderings (for example, posters), displayed in a public place, made available to many individuals, or made public in public meetings, through radio or TV broadcast, or other analogous media.¹¹⁷

Lastly, Article 179 criminalizes insults, providing that a person who offends the dignity or decorum of another who is present, by word or through action, is subject to a fine of 50 to 100 days’ wages. That fine increases to 100 to 180 days’ wages for public or repeated insults, and 180 to 240 days’ wages for repeated public insults.

Individual liability for these crimes is extended to journalists, reporters, editors, directors, managers, legal representatives and owners of media outlets that have made the critique, commentary, or report that gave rise to the crime, to the extent that they have acted as authors or participants in the crime in question that was carried out through their medium.¹¹⁸

The Penal Code provides for an additional penalty when the offender is a journalist who commits any of the above offences through mass media. In addition to the relevant fine, the journalist may be prohibited from practicing his or her profession for a period of six months to two years, depending on the severity of the offense and the harm caused.¹¹⁹

The Code also provides for a number of defenses upon which the accused may rely, notably:

- Article 183 – provides that truth is a defense to calumny and defamation, and except where the speech pertains to conduct protected by the right to personal or family privacy, each of the following categories: (i) the dissemination that foment the free flow of information in a democratic society; (ii) information about public figures; and (iii) information published by members of the news media who, without knowing of the falsity of the information they publish (and having diligently fact-checked their sources), reported the statement in question.
 - Article 183-A – provides that a case for the crimes contemplated in this chapter may only proceed where there is legally sufficient evidence that there was no reply or that no right of reply was permitted.
 - Article 191 – states that there will not be liability for unfavorable political, literary, artistic, historic, scientific, religious, or professional critiques, or for unfavorable concepts expressed through any medium in the exercise of the right to free expression, so long as the manner in which this is done does not have a libelous or injurious purpose or constitute an attack on the person. The article then expressly states that such unfavorable opinions or expressions (of a political, literary, artistic, historical, scientific, religious, or professional nature) shall not incur liability when expressed or broadcasted by journalists, by way of news,
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reports, news investigations, articles, opinion, editorials, caricatures, and general journalistic notes. This applies whether the journalistic statement is in written, radio, television, or online media. This is considered part of the “duty to inform,” which is a component of the right to information and also the journalists’ charge and function. Editors, managers, directors, and those who own media outlets or are responsible for programming are all included in the concept of journalism.

- Article 191-A – provides that, when a judge is deciding a case where the right to freedom of expression and a person’s right to honor collide, he or she shall consider: (a) if the conduct complained of corresponds to the social function of journalism, and (b) if the conduct or information tries to contribute to the formation of free public opinion, as established in Article 183. If (a) is true, the judge must take into account the frequent risks associated with the exercise of journalism’s function, as well as how the information was obtained from its source. In either case, the judge must balance these two “colliding” rights in reaching her decision.

Finally, it should also be noted that where it is not possible to criminally prosecute one of the above offences because the person or actor responsible for the defamatory statements cannot be identified but there is sufficient evidence that a crime has occurred, the legal or natural persons owning such media have “vicarious civil liability” only. Vicarious civil liability means that a person or entity is liable for the actions of another person when engaged in some form of joint or collective activity. In all cases, the damages will be proportionate to the harm caused.¹²⁰

2. *Desacato*

Article 339 of the Penal Code criminalizes “*desacato*” (or “contempt”), by providing that offending the honor or dignity of a public official or threatening him or her in his or her presence or in a writing directed to him or her is punishable by six months to three years in prison. If the offense is against the President or Vice President, a Deputy of the Legislative Assembly, a cabinet minister or sub-secretary, or a judge, the maximum penalty may be increased by one-third.

B. Enforcement of Criminal Defamation Laws

Criminal prosecution of journalists is rare in El Salvador. However, extralegal threats and violence against the press have occurred in the recent past.¹²¹

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Mobile and Internet communications are covered by the criminal defamation laws described above.

D. Status of Criminal Defamation Laws

Important amendments to the criminal defamation laws were made in September 2011 through Decree No. 836.¹²² Most significantly, this decree replaced prison sentences with financial penalties (fines); however, it did not decriminalize any of the acts described in the Penal Code.¹²³

There is not currently any significant discussion or momentum towards decriminalizing defamation or “*desacato*” (contempt).

IV. Guatemala

A. Criminal Laws Restricting Freedom of Expression¹²⁴

The Guatemalan Criminal Code penalizes defamation, calumny and insults as “crimes against honor” under Articles 159 through 166.

Specifically, Article 159 criminalizes calumny, by prohibiting the false imputation of a crime to another person. This applies only if the crime attributed to that person is of the type that would not require the victim’s participation in order to be prosecuted by the government (that is, it could not be prosecuted “*ex officio*”). Calumny is punishable by a prison term of between four months to two years and a fine of 50 to 200 quetzals (about 7 to 26 US dollars). Under Article 160 of the Code, the accused can defend against an accusation of calumny by proving the truth of the alleged imputation.

Article 161 criminalizes “insult” by providing that “[a]ll expression or executed action to dishonor, discredit or scorn another person is insult.” Insult is punishable by a prison term of two months to a year. Unlike with the crime of calumny, the accused cannot rely on the truth as a defense.

Article 164 criminalizes defamation by providing that “[t]here is criminal defamation when accusations constituting calumny or insult are made in the form or via the medium of publication that can provoke hatred or discredit or that will reduce the honor, dignity, or the decorum of he who is offended, before society.” Defamation is punishable by a prison term of five years.

Lastly, Article 165 also provides that “[h]e who knowingly reproduces, by any medium, insults or calumnies committed by another, will be punished as if he is the author of the same between two to five years.”

For journalists, an effective defense to these crimes is to proceed in the courts with a “print jury” instead of proceeding through the ordinary criminal process. This “print jury” is only available to journalists and it is regulated by the Law on Freedom of Thought (*Ley de Libre Emisión del Pensamiento*). The role of the print jury is to decide, on a case-by-case basis, whether the accused committed a crime of speech.¹²⁵ If the jury decides that the accused committed a crime, the judge will continue the proceedings to decide the punishment.¹²⁶ However, if the jury decides that a crime was not committed, then the case will be dismissed.¹²⁷

The jury is composed of 21 jurors elected by the relevant department of Guatemala, seven jurors elected by the Bar Association, seven jurors elected by the Journalism Association, seven jurors elected by the municipality of the capital, and nine jurors from the other departments where there is a press and a broadcasting station.¹²⁸ The benefit of the print jury is that it represents different social interests and that it includes among its members jurors chosen by the Journalism Association.¹²⁹

B. Enforcement of Criminal Defamation Laws

These laws are applied as a personal felony charge against the person who allegedly committed the offense, journalist or not. There is no absolute right to criticize in Guatemala; any special consideration of journalism occurs as an effect of the above-mentioned law and its resulting procedures.¹³⁰

The most relevant recent case involves journalist Jose Ruben Zamora Marroquín, the president of the newspaper *el Periódico*, who was recently accused of coercion, blackmail, extortion, violating the constitution, and insulting the President by the President and Vice President of Guatemala.¹³¹ A judicial order was put in place barring Zamora from leaving the country until other requests, like the freezing of his assets, were decided.¹³²

Zamora published articles and columns that accuse the President and Vice President of corruption and ties to organized crime.¹³³ In his complaint, the Guatemalan president said that “*el Periódico* had damaged [my] and the country’s reputation.”¹³⁴ On January 9, 2014, the President and Vice President of Guatemala withdrew the criminal charges against Zamora, thus lifting of the judicial order that prevented Zamora from leaving Guatemala.¹³⁵ However, as of the time of writing, the President and Vice President continue to pursue civil charges against Zamora, which will be decided by an *ad hoc* tribunal pursuant to the Law on Freedom of Thought.¹³⁶ Additionally, in October 2014, Enrique Alejandro Toledo Paz, ex director of the Roosevelt hospital in Guatemala, sued Zamora for calumny and defamation.¹³⁷ The aim of the civil charges is widely viewed as silencing Zamora’s criticisms of the President and Vice President.

Another recent case involves journalist Giovanni Fratti Bran, who was accused of criminal defamation by the Federation of Agricultural Cooperatives of Coffee Producers in Guatemala (*Federación de Cooperativas Agrícolas de Productores de Café en Guatemala*, FEDECOCAGUA).¹³⁸ The basis for the action, which remains pending, is that, in October 2011, Fratti stated that the International Commission Against Impunity in Guatemala (*Comisión Internacional contra la Impunidad en Guatemala*, CICIG) and the Guatemalan Attorney General's Office were "worthless" because they failed to investigate FEDECOCAGUA, Banrural, and the National Association of Coffee in relation to the death of attorney Rodrigo Rosenberg Marzano.¹³⁹

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Article 164 provides that if defamation is made by "means" of mass communication, it is considered criminal defamation. This provision thus includes the Internet.

D. Status of Criminal Defamation Laws

Most notably, the crime of "*Desacato* to Presidents of the State," in Articles 411, 412 and 413 of the Criminal Code, was declared unconstitutional by the Guatemalan Constitutional Court on April 12, 2006. This provision is therefore no longer in force in Guatemala. Despite widespread public support for this development, there does not appear to be any discussion currently regarding the repeal of the other criminal defamation offenses.

V. Honduras

A. Criminal Laws Restricting Freedom of Expression

Honduras has a national Penal Code that criminalizes calumny, insult and defamation in Title III, "Crimes Against Honor." These crimes apply equally against the person who initially commits the offense and any person who, according to Article 161, spreads or disseminates the offending statements further.

In particular, Article 155, criminalizing calumny, states that the calumny or false accusation of a crime (the crime being of the type that does not require the victim's participation in order to be prosecuted by the government), is punishable by 2-3 years of imprisonment. In addition, at the victim's request, the deciding portion of the sentence in which the calumny is declared may be published in the papers of the greatest circulation in the country, at the cost of the defendant. However, under Article 156, a person accused of calumny may completely exonerate him or herself by proving the truth of the criminal act that had been attributed to the victim.

Article 157, criminalizing “insult”, provides that “a person who gives expression or takes an action to the dishonor, discredit, or contempt of another person shall be punished for insult, with a sentence of 1-2 years of imprisonment.” Under Article 158, proof of the truth of the offense shall not be a defense, *except* where the offended person is a public employee or official and the accusation concerned the exercise of that employee or official’s duties. Under Article 159, a judge may declare insult to be without punishment in certain specific situations, such as when the insult was reciprocal (that is, both parties are guilty of having insulted each other, under the meaning of the statute).

Lastly, Article 160, criminalizing defamation, establishes that “[t]he crime of defamation occurs and the guilty person is charged with calumny or insult, as may be the case, with the punishment increased by one-third (1/3), when the accusations constituting calumny or insult are made in a form or by a medium of dissemination that incites public hatred or contempt against the accused person.”

B. Enforcement of Criminal Defamation Laws

There have been several relevant cases in which the offended party has brought proceedings against a journalist on the basis of the journalist’s accusations. Normally, however, such matters are instead mediated through the conciliation process, and the judicial proceeding does not go forward.

Four recent cases are described below—they are particularly instructive on potential defenses for future defendants to criminal defamation prosecutions:

1. Johnny Kaffati’s v. Esdras Amado Lopez

The most important defamation case of the last few years is Johnny Kaffati’s defamation case against the journalist Esdras Amado Lopez, Director of Cholusat Sur, Channel 36, in 2005. The journalist had accused Mr. Kaffati (who served as the Minister Advisor on Housing matters during the 2002-2006 presidential term) of wanting to transfer funds from the Public Employee Retirement and Pension Institute (*Instituto de Jubilaciones y Pensiones de Epleados Públicos*, INJUPEMP) to a bank in which Mr. Kaffati was a shareholder. In the end, the transfer never occurred, but Mr. Kaffati brought proceedings with a judicial complaint against the journalist.

The defense attorney for Mr. Amado argued that the information on which Mr. Amado relied in accusing Mr. Kaffati was an official report. However, this report was never shown in court, and the accusations against Mr. Kaffati have not been proven in court.

The matter is still pending within the judicial system. It was first annulled for containing fundamental procedural errors (*vicios de nulidad*), but the action was then re-initiated by Mr. Kaffati. The resulting judgment is currently on appeal to the Criminal Chamber of the Supreme Court of Justice.

2. Marcelo Chimirri v. Renato Álvarez and Roxana Guevara

In 2007, the ex-Manager of Hondutel (the national telecommunications company), Marcelo Chimirri, brought an action against the journalists Renato Álvarez and Roxana Guevara of Televisión. The action was premised on the fact that the journalists had repeated a report prepared in Mexico in which Mr. Chimirri was accused of fraudulent acts against Hondutel, of having inexplicably increased his fortune, and of having been involved in the death of Yadira Miguel Mejía.

The action was declared inadmissible by the sentencing court, as the court considered the journalists' acts not to constitute a crime. The action was thus closed without further proceedings in 2007. The case has not been re-opened. The defense for the accused had argued that reading the report prepared in another country by a third person did not constitute a crime, given that the journalists were complying with their task of being information providers and never accused Mr. Chimirri of committing a crime. However, the case was dismissed before the judge reached the merits; therefore, this defense was not tested in court.

3. Carlos Ismael Galeas

In 2012, Carlos Ismael Galeas, news director at radio San Miguel in Marcala, in the central department of La Paz, was indicted for the crime of defamation by the prosecutor Siomara Benítez Molina. The accusation was based on the fact that Mr. Galeas had revealed that certain members of the police force were investigating coffee smuggling into El Salvador, but that the investigation was halted because high-up members of the very same National Police had been implicated.

The sentencing court found the charges of defamation to be without merit, and the action was therefore declared inadmissible and closed without further proceedings as of the beginning of 2013. The attorney for Mr. Galeas had argued that the action did not constitute a crime, because it merely retransmitted a declaration of a police official, within which it was the police official himself who indicated that there were high-up officials involved in the coffee smuggling to El Salvador.

4. Julio Ernesto Alvarado

In 2014, an appeals court ruled to forbid television journalist Julio Ernesto Alvarado from practicing journalism for 16 months as part of a criminal defamation conviction. Mr. Alvarado will appeal the case to the appeals court and then the Supreme Court in Honduras, and has asked the Inter-American Commission on Human Rights to take up the case if that fails.

The case was the result of a series of broadcasts on *Mi Nación* in 2006 in which the appointment of Belinda Flores de Mendoza as Dean of the Economics School at Autonomous National University of Honduras (UNAH) was discussed. The broadcasts alleged irregularities in the granting of degrees while she was in her previous position at the University. Flores filed a criminal defamation suit against Alvarado, as well as against Carlos Gustavo Villela, a professor at the University, and Guillermo Ayes, head of the Teachers' Association at UNAH. A Tegucigalpa court in 2011 found the three men innocent, but Flores appealed. In December 2013, the Supreme Court found Alvarado guilty, but upheld Villela and Ayes' verdict. In the ruling, the court dismissed Alvarado's defense that he had merely cited the opinions of others, and said that by voicing these allegations he had damaged Flores' honor and reputation.¹⁴⁰

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Honduras's criminal defamation laws extend to every kind of communications medium—radio, television, written, or electronic. No matter the medium or the audience that has been reached, the important element is the act or fact itself, and the action may thus arise from any declaration made via any medium.

D. Status of Criminal Defamation Laws

The Penal Code's provision regarding *desacato* or insult (Article 345) was overturned in 2005 by the Constitutional Chamber of the Supreme Court of Honduras.¹⁴¹ The Court determined that Article 345 of the penal code was unconstitutional "because it provided 'special protection' to public officials and restricted freedom of expression."¹⁴²

However, the generic calumny, insult and defamation provisions cited above are still in force.¹⁴³ These articles were last revised (without any significant changes) as follows: (a) Decree 59–97 of May 8, 1997 (published June 10, 1997 and in force as of that date) amended Articles 155, 157, and 165 of the Penal Code; and (b) Decree 191-96 of October 31, 1996 (published on February 8, 1997 and in force from that date) amended Articles 156 and 160. In 2012, the then President Porfirio Lobo Sosa announced that he was going to present a bill to decriminalize defamation.¹⁴⁴ Since then, however, to the best of our knowledge, there have been no efforts underway to repeal the laws of Honduras with respect to criminal defamation, calumny, and insult.

VI. Nicaragua

A. Criminal Laws Restricting Freedom of Expression

Defamation and “*desacato*” (contempt) are both criminalized in the Nicaraguan Penal Code. The penalty for both crimes are fines rather than imprisonment.

1. *Insults and Calumny*

Nicaragua’s Penal Code penalizes “crimes against honor” under Articles 202 through 205.

In particular, Article 202, penalizing calumny, provides that “[h]e who falsely imputes to another the commission of or participation in a specific crime will be sanctioned with a fine of 100 to 200 days’ wages.”¹⁴⁵ If the calumny is disseminated publicly, the penalty will be a fine of 120 to 300 days’ wages.

Article 203, penalizing “insult,” provides that “[w]hoever via expression or action harms the dignity of another person, discrediting their fame, image, reputation, honor or offending against their self-esteem, will be sanctioned with a fine of 100 to 200 days’ wages.”¹⁴⁶ If the insult is disseminated publicly, the penalty will be a fine of 200 to 300 days’ wages.

Nicaragua also penalizes the unauthorized dissemination of images of a deceased person, and offending against the memory of a deceased person. Specifically, the law states that “whoever disseminates, through any medium, images of a deceased without authorization of his spouse, parents, children, or siblings, with ill intent that increases the pain generated by that person’s death will be sanctioned with a fine of 100 to 300 days’ wages.”¹⁴⁷ In addition, “whoever offends against the memory of a deceased person with defamatory or libelous expressions, will be sanctioned with a fine of 100 to 200 days’ wages.”¹⁴⁸ The right to bring an action for this crime belongs to the spouse, parents, children or siblings of the deceased.

The Penal Code provides for an “aggravating factor” where the calumny or insult is carried out for financial gain. In such cases, the fine imposed is, at minimum, the maximum fine that can normally be imposed for the relevant offense. At maximum, an aggravating factor allows a court to fine the accused with the maximum fine for that offense, plus an additional 50% of that amount.¹⁴⁹

The statute of limitations for both calumny and insult is thirty days.¹⁵⁰ This means that a victim must bring charges within this time against the alleged offender.

The Penal Code provides for a number of defenses against the crimes of calumny and insult. As an initial matter, Article 204 provides that no crime of defamation will exist where:

- The accusation was truthful and connected with the defense of a current public interest;
- The information concerns newsworthy facts that were gathered in accordance with journalistic ethics;
- The expression concerns unfavorable opinions of political, literary, artistic, historical, scientific, professional criticism without an offensive purpose;
- The expressions were directed against functionaries or public employees about truthful facts concerning the exercise of their official duties;
- The expression deals with an unfavorable view that was expressed while fulfilling a duty or exercising a right and does not demonstrate an offensive proposal;
- The offenses were contained in written pleadings or in oral argument by litigants, plaintiffs or defendants before the Court, and concerning the objective of the proceedings. These are subject only to the corresponding disciplinary sanctions normally provided for statements relating to court proceedings.¹⁵¹

Retraction of the calumnious or insulting material may also extinguish the defendant's criminal liability, so long as the offended person accepts the retraction. At the request of the victim and the defendant's cost, the judge may order the publication of the retraction. Where the calumny or insult was disseminated through a specific means of communication, the judge may order that the retraction is published in a similar fashion in the same means of communication.¹⁵²

At any time prior to the defendant's sentence, the offended person may pardon him or her, which will exempt the defendant from criminal liability.¹⁵³

2. *Desacato*

The Nicaraguan Penal Code also provides for a "*desacato*" (contempt) offense, under Title XX, "crimes against public order." Unlike in other Central American countries, the crime of *desacato* in Nicaragua appears to be divorced from the defamation context and more closely related to the concept of contempt of court. Specifically, Article 462 provides that "[h]e who

disobeys a judicial resolution or a resolution emanating from the Public Prosecutor, unless it is in connection with the detention itself, will be subject to six months to a year in prison or a fine of 50 to 150 days' wages."¹⁵⁴ The offence will no longer exist when the disobeyed resolution is complied with voluntarily or as a result of a subsequent exercise of authority.

B. Enforcement of Criminal Defamation Laws

Criminal defamation lawsuits are brought frequently against journalists in Nicaragua.¹⁵⁵ In January 2012, a pro-government journalist and head of the local chapter of the Association of Journalists, Luis Fernando Pozo Maradiaga, accused a journalist who is a critic of the regime, William Aragón Rodríguez, of calumny and insults. Aragón was accused of linking Pozo to corruption. The judge suspended the proceedings, finding there to be no evidence to support either offence.¹⁵⁶

C. Application of Defamation Laws to Internet and Mobile Communications

While the penal code does not refer explicitly to Internet and/or mobile communications, it does not exclude them. The broad wording of the provisions cited above would appear to indicate that such communications are included within their scope.

D. Status of Criminal Defamation Laws

A revised Penal Code entered into force in Nicaragua in 2008. The revisions entailed a number of changes to render the criminalization of defamation and Nicaragua's *desacato* crime less restrictive on the media. Some of the most significant are:

- Previously, if the defamation was disseminated through the press or other widely distributed publications, at a public meeting, or through cinematography, radio, television, recordings, or similar means, the relevant fine would be augmented by 50%.¹⁵⁷ This provision has been abolished.
 - Also, in such cases, the fine was required to be paid within three days of the guilty verdict, on penalty of the immediate suspension of the medium that published the defamation.¹⁵⁸
 - Directors, editors and owners of newspapers, printing presses, radio stations, television stations and other media through which defamation was disseminated were considered "coauthors" of the crime. They were obliged to publish either a
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retraction or the guilty verdict within 24 hours of it being handed down, and pay the relevant fine, augmented by 50%.¹⁵⁹

- With regard to defamation published by the foreign press, the Code penalized those who sent the relevant material abroad from Nicaragua, or who contributed to the introduction and circulation of the relevant publications within Nicaragua, with “manifest intention” to propagate the defamation.¹⁶⁰
- The Code previously included within the crime of *desacato*:

Those who provoke grief in, libel, defame or insult by word or deed, threaten a public official in the exercise of its duties or by reason of them, in his presence, or by notification or writing directed at him.

- The statute of limitations previously ran from 30 days through one year depending on the circumstances.¹⁶¹ It now stands at 30 days in all cases.

Neither decriminalization nor repeal of the existing laws is currently a topic of debate within Nicaragua. However, it is worthy of note that, in February 2011, Nicaragua’s Supreme Court introduced a bill that would make “media violence” a criminal offence. While the bill’s purported aim was to reduce the high number of crimes against women—with the crime of “media violence” aimed at preventing women from being disparaged and satirized in the press—the International Press Association voiced concerns that it would cause “absurd censorship, self-censorship and serious repression of journalists and the news media.”¹⁶² In the face of similar concerns voiced by citizens, and particularly the media, the legislature removed all reference to “media violence” during the consultation process and before the bill passed into law.¹⁶³

VII. Panama

A. Criminal Laws Restricting Freedom of Expression

Freedom of speech and press are protected in Panama’s constitution. However, Panama’s Penal Code criminalizes defamation, the penalties for which include fines and prison time.

1. *Insults and Calumny*

Panama’s Penal Code penalizes “crimes against honor” under Articles 190 through 192.¹⁶⁴ In particular, Article 193, criminalizing “insult,” provides that “[w]hoever offends the dignity, the

honor, or the decorum of any person in writing or any other medium will be punished with sixty to one hundred twenty days fine.”

Article 194, criminalizing “calumny”, states that “[w]hoever attributes falsely to another person the commission of a punishable act will be sanctioned with ninety to one hundred [and] eighty days fine.”

However, if the aforementioned crimes are committed “through an oral or written social media or using an information system,” the offender will be punished in the case of insult with prison of six to twelve months or its equivalent in days-fine and for calumny with prison of twelve to eighteen months or its equivalent in days-fine.¹⁶⁵

The Criminal Code also provides for a number of defenses on which the accused may rely, notably:

- Article 196 – For crimes against honor, the public and consented retraction for the offense will eliminate the offender’s criminal responsibility. When the calumny or injury concerns public servants listed in Article 304 of the Constitution of Panama, such as elected officials or governors, criminal sanctions will not be imposed, although civil liability may still apply.
- Article 197 – The person accused of calumny will be left free of punishment if he proves the truth of the accused facts. The person accused of injury will only be permitted to prove the truth of his accusations when those accusations do not refer to conjugal or private life of the offended person.
- Article 198 – The discussions, critiques, and opinions about official acts or omissions of public servants, related to the exercise of their functions and also about literary, artistic, historic, scientific, or professional critique will not be a “crime against honor.”

2. *Desacato*

Legislation criminalizing “*desacato*” (contempt) was repealed in 2008.

B. Enforcement of Criminal Defamation Laws

Criminal defamation cases against journalists “occur regularly and often take years to move through the legal system.”¹⁶⁶ The following are examples of the most notable recent cases.

In July 2008, the Supreme Court voided presidential pardons granted in 2004 as the pardons were deemed unconstitutional. The pardon recipients included 87 journalists charged with criminal defamation.¹⁶⁷

In 2010, a Panamanian court of appeals convicted two TV journalists of criminal defamation and banned them from professional work for one year. The case stemmed from a 2005 story, aired by the national broadcaster TVN Canal 2, alleging that Panamanian immigration officials were taking part in human trafficking. Two officials named in the story filed a defamation complaint against Sabrina Bacal, the station's news director, and Justino González, the reporter on the story, Panamanian press reports said. In separate rulings in February and March, two lower courts had dismissed the charges against the reporters.

However, in a ruling dated September 28, 2010, an appeals court in Panama City overturned the lower court decisions and barred the reporters from working for one year. The court also ordered Bacal and González to pay a US\$3,650 fine or be subjected to a one-year suspended prison term. Facing criticism from the local press and human rights defenders, then-President Ricardo Martinelli issued a full pardon to the journalists.

Also in 2010, a 70-year-old Panamanian journalist was arrested and jailed on a defamation conviction. The charges against Carlos Núñez López stemmed from a 2000 story in the now-defunct weekly newspaper *La Crónica* about environmental damage in the province of Bocas del Toro. A landowner alleged his reputation had been damaged by the article, the local press said. While the journalist was convicted to a one year prison term he was released after spending 19 days in prison.¹⁶⁸

C. Application of Defamation Laws to Internet and Mobile Communications

In Panama, there is no express provision that extends criminal defamation to Internet or mobile communications. Additionally, there appear to be no government restrictions on the Internet, which was accessed by 45 percent of the population in 2012.¹⁶⁹

D. Status of Criminal Defamation Laws

Panama has partially decriminalized defamation. In 2004, the National Assembly of Panama adopted a Constitutional amendment that repealed a Constitutional provision that had criminalized criticism of country leaders or government policies by the press.¹⁷⁰ The amendment was signed into law by President Martín Torrijos in July 2005, and stated that “[n]o public official with rank and jurisdiction shall impose any fines on, or dictate prison sentences for, those who are deemed to have treated them with disrespect or have insulted them while fulfilling their official duties.”¹⁷¹

Subsequently, in 2008, Panama amended the Criminal Code to conform to this constitutional amendment. Specifically, under a May 2008 reform, defamation of certain high-ranking public officials is no longer an act that is subject to criminal sanctions, although it remains a criminal offense.¹⁷²

Notwithstanding this, other forms of criminal defamation remain in place.¹⁷³ Moreover, in early 2011, a draft bill was introduced in the National Assembly that would have imposed a prison sentence of two to four years on any individual found guilty of “insulting” the president or any government official. The bill was ultimately withdrawn after serious public criticism.¹⁷⁴



THE CARIBBEAN

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I. ANTIGUA AND BARBUDA

A. Criminal Laws Restricting Freedom of Expression

Defamation remains a criminal offence in Antigua and Barbuda under the Libel and Slander Act, which dates to 1876 and was last updated in 1976. The Act, which governs both criminal and civil libel, “is identical to laws in Dominica and St. Kitts and Nevis and is a near-exact replica of Lord Campbell’s Act, a British libel law first enacted in 1843.”¹⁷⁵ Additionally, the Seditious and Undesirable Publications Act and the Small Charges Act include provisions that criminalize seditious libel, insult to authority, and obscene publication or offense to public morality.

1. Defamation

Antigua and Barbuda’s the Libel and Slander Act expressly criminalizes defamatory libel, providing that “[i]f any person shall maliciously publish any defamatory libel” he will be punished with up to one year in prison with/or a fine.¹⁷⁶ If the defamatory libel is maliciously published by the offender when he or she “know[s] [it] to be false,” the offender may be punished with up to two years in prison and a fine. Separately, the Act also maintains a prohibition against the publishing or threatening to publish a libel with the intent to extort (that is, to gain from the libel), which is punishable by up to three years in prison “with or without hard labor.”¹⁷⁷

Additionally, the Libel and Slander Act punishes the malicious or reckless publishing of any defamatory statement other than a defamatory libel in relation to another person with one year in prison or a fine.¹⁷⁸ Moreover, the publication of any defamatory statement in relation to the personal character or conduct of any person is punishable by up to nine months in prison or a fine.¹⁷⁹ A “defamatory statement” is defined in the Act to be “a statement concerning any person which exposes him to hatred, ridicule, or contempt, or which causes him to be shunned, or avoided, or which has a tendency to injure him in his office, profession or trade.”¹⁸⁰

2. Seditious Libel or Insult to Authority

Antigua and Barbuda also criminalizes seditious libel and slander (that is, libel or slander with the “seditious intent,” as defined below) under its Sedition and Undesirable Publications Act, which dates to 1938 and was last amended in 1956.¹⁸¹ In particular, this Act penalizes libel with seditious intent and the possession of seditious publication. The former offense includes attempts to act with seditious intention, the utterance of seditious words, and the printing, publishing, sale, reproduction or import of a seditious publication, and is punishable with imprisonment of up to two years with or without hard labor or a fine not exceeding EC\$5,000 (approximately US\$1,850).¹⁸² Possession of a seditious publication, without lawful excuse, is punishable with imprisonment of up to one year or a fine of up to EC\$3,000 (approximately US\$1,111), with or without hard labor.

A “seditious intent” is defined in the Act as an intention to: bring into hatred or contempt or to excite disaffection against the sovereign or the administration of justice; incite people to crime; raise discontent among citizens; and promote feelings of ill-will and hostility between different classes.¹⁸³

3. Obscene Publication or Offense to Public Morality

Lastly, under the Small Charges Act, Antigua and Barbuda also penalizes the publication or circulation of any “indecent matter” or any “advertisement regarding the cure of venereal complaints or secret diseases” with a fine of up to EC\$3,000 (approximately US\$1,111).¹⁸⁴

B. Enforcement of Criminal Defamation Laws

There have been no recent criminal prosecutions for defamation in Antigua and Barbuda, and criminal defamation laws do not appear to have been significantly used against journalists in the past decade. The last notable case was in 2005, when Gene Pestaina, then-director of the Office of Public Prosecutions, filed criminal libel charges against Lennox Linton, a Dominican-born journalist and manager of Observer Radio over comments Linton made on the suitability of Gene Pestaina for the Office of the Director of Public Prosecutions.¹⁸⁵ These comments reportedly stemmed from questions Linton asked about the status of investigations regarding several cases the government said it would be pursuing against former government ministers. Pestaina claimed that the statement subjected him to ridicule and could injure him under the Libel and Slander Act.

Although the case was never brought to a close, in August 2007 Linton was deported from Antigua and Barbuda. In 2009, in a suit brought by Linton against the Antiguan government, the Antigua High Court ruled that Linton’s deportation had been illegal and awarded him damages.¹⁸⁶

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Criminal defamation legislation in Antigua and Barbuda does not expressly cover Internet or Mobile communications. Additionally, there are no government restrictions on the Internet, which was accessed by 84 percent of the population in 2012.¹⁸⁷

D. Status of Criminal Defamation Laws

There have been no recent amendments to criminal defamation or “*desacato*” laws in Antigua and Barbuda. However, in 2013, leading government officials made a number of commitments to repeal these laws. Specifically, the Prime Minister, the Attorney General, and both in-power and opposition leaders have all expressed their support for the elimination of criminal defamation laws.¹⁸⁸ The Attorney General recently stated that a bill to repeal the laws will be introduced in Parliament early this year.¹⁸⁹ Despite these pledges, however, as of February 2014 defamation in Antigua and Barbuda remains a criminal offense.¹⁹⁰

II. BAHAMAS

A. Criminal Laws Restricting Freedom of Expression

The Bahamian Penal Code codifies two forms of criminal defamation: negligent and intentional libel.

1. *Negligent and Intentional Libel*

Specifically, section 316 of the Penal Code states that a person is guilty of libel “who, by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, either negligently or with intent to defame that other person.”¹⁹¹ Negligent libel is penalized with imprisonment for six months, while intentional libel is penalized with imprisonment for two years.¹⁹²

Pursuant to the Penal Code, a matter is defamatory if it “imputes to a person any crime or misconduct in any public office, or which is likely to injure him in his occupation, calling or office, or to expose him to general hatred, contempt or ridicule.”¹⁹³ Moreover, the Code clarifies that “it is not necessary for libel that a defamatory meaning should be directly or completely expressed ... it suffices if such meaning and its application to the person alleged to be defamed, can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.”¹⁹⁴ This means that the defamatory meaning may be implied, in whole or in part, from the message or from the context surrounding the statement.

2. Defenses

Sections 319-322 elaborate upon the defenses of defamation charges, which include the defenses of absolute and conditional privilege. Where a publication is absolutely privileged no person shall under any circumstances be liable to punishment, and it is immaterial (except where expressly noted) “whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith.”¹⁹⁵ The publication of defamatory matter is absolutely privileged if, for example:¹⁹⁶

- the matter is published by the Governor-General or by the Senate or the House of Assembly of The Bahamas in any official document or proceeding;
- the matter is published concerning a person subject to military or naval discipline for the time being, and (a) relates to his conduct as a person subject to such discipline, and (b) is published by some person having authority over him with respect to such conduct, and (c) is published to some person having authority over him with respect to such conduct;
- the matter is published by a person acting in any “judicial proceeding” within the meaning of section 423, whether as a judge or magistrate, or as Attorney General or other public prosecutor, or as a juror or a member of a commission of enquiry, or as a witness;
- the person publishing the matter is legally bound to publish it; or
- the matter is true, and it is also found by the jury that it was for the public benefit that it should be published. However, defendants bear the burden of establishing the truth of published material when facing defamation claims made by public officials.¹⁹⁷

A publication of defamatory matter is also privileged, on condition that it was published in good faith if, for example:¹⁹⁸

- the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of the matter was or would have been privileged under section 320;
- the matter is published by a person acting as counsel or advocate in the course of, or in preparation for, any legal proceeding;

- the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct;
- the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct;
- the matter is an expression of opinion in good faith as to (a) the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal; or (b) as to the conduct of any person as a party, witness or otherwise in any such proceeding; or (c) as to the character of any person so far as it appears in any such conduct;
- the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech or other work, performance or act (a) published, or (b) publicly done or made, or (c) submitted by a person to the judgment of the public, or (d) as to the character of the person so far as it appears therein.

B. Enforcement of Criminal Defamation Laws

The criminal defamation laws in the Bahamas appear to be used “rarely if ever.”¹⁹⁹ No recent criminal prosecutions against journalists could be found.²⁰⁰

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

No recent application of these laws appears to extend them to Internet or Mobile communications. However, the definition of libel, which refers to “any means,” would be broad enough to encompass such communications.

D. Status of Criminal Defamation Laws

While the Bahamian Penal Code has been repeatedly updated in the past few years, the criminal defamation provisions have been left untouched.²⁰¹

The International Press Institute has made calls for Bahamian leaders to begin reform and elimination of criminal defamation laws from the books; however, there is no evidence of any actual progress on this front.²⁰²

III. BARBADOS

A. Criminal Laws Restricting Freedom of Expression

1. Libel

The Barbadian Defamation Act provides that an action for defamation “shall arise where a person publishes any matter, by means of the whole or any part of which, the publisher makes an imputation defamatory of another person, whether by innuendo or otherwise.”²⁰³ According to Section 34 of the Act, “liability for criminal libel shall extend to charges contained in matter published by means of broadcasting; or in permanent form.”²⁰⁴ Sanctions for criminal libel include a fine of up to \$2,000 and/or imprisonment of up to 12 months.²⁰⁵ However, no prosecution for criminal libel shall be brought without the consent of the Director of Public Prosecutions in respect of any matter appearing in a newspaper or periodical publication against any proprietor, publisher, editor or other person responsible for the publication of such newspaper or periodical publication or against any person who is paid to contribute matter to such newspaper or periodical publication.²⁰⁶

2. Defenses

The Barbadian Defamation Act contemplates the defense of “comment” and the defense of “privilege to a prosecution for criminal libel.”²⁰⁷ The defense of comment is a defense against the prosecution of criminal defamation where the libel or slander is a fair comment on a matter of public interest.²⁰⁸ In an action for defamation where the statement (literally, the “words”) include or consist solely of expression of opinion, “a defense of comment shall not fail only because the defendant has failed to prove the truth of every relevant assertion of fact relied on by him as a foundation for the opinion,” provided that the assertions proved to be true “are relevant and afford a foundation therefore.”²⁰⁹ Moreover, the defense of comment shall not be limited or otherwise affected by the fact that dishonorable or corrupt motives have been attributed to the plaintiff.²¹⁰

The defense of privilege includes absolute and qualified privilege, which protect, for example:²¹¹

- the publication of a fair, accurate and contemporaneous report in any newspaper or broadcast program of any proceedings in public before a court (including a court established by a disciplinary law and a tribunal or inquiry recognized by law and exercising judicial functions);
- proceedings of Parliament;
- reports commissioned by either House; and

- the publication of a fair and accurate report of proceedings in Parliament.

However, the defense of qualified privilege shall be defeated if the plaintiff proves that the defendant in making the allegedly libelous publication had a malicious intent.²¹²

B. Enforcement of Criminal Defamation Laws

It does not appear that the criminal libel laws have been applied recently or that journalists have been threatened with criminal charges. Moreover, there have been no criminal prosecutions of journalists within the past five years.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

While not expressly stated in the statute, it seems that Internet and/or Mobile communications could be included within the meaning of “publication” which is broadly defined as “publication . . . in any manner and whether or not in permanent form; and ‘published’ shall be construed accordingly.”²¹³

D. Status of Criminal Defamation Laws

In 2008, the Democratic Labor Party included a pledge to amend the defamation law in its electoral manifesto.²¹⁴ The Democratic Labor Party won the election and established an Advisory Board on Governance, which was tasked with amending the Defamation Act to allow freedom of speech when a public figure was the focus of the speech. However, the work of the Advisory Board was not submitted to the legislature.²¹⁵ It does not appear that there has been further debate on amending the law.

IV. CUBA

A. Criminal Laws Restricting Freedom of Expression

Cuba has the most restrictive laws on free speech and press freedom in the Americas. The constitution prohibits private ownership of media outlets and allows free speech and journalism only if they are “in keeping with the objectives of a socialist society.”²¹⁶

The Penal Code offers the Cuban authorities an array of criminal provisions to suppress dissent and punish those overtly critical of the government. In general, the Penal Code addresses three forms of criminal defamation offences: defamation (*difamación*), insults (*injuria*) and contempt of authority (*desacato*).

1. Defamation

Cuba's Penal Code expressly criminalizes defamation and slander under its section on crimes against honor.²¹⁷ In particular, Article 318 provides that "[h]e who, before third parties, imputes to another a conduct, fact or characteristics, contrary to honor, which may damage his social reputation, belittle him in public opinion or expose him to loss of the trust required to perform his job, profession or social function," will be punished with three months to one year in prison with/or a fine.²¹⁸ Separately, the Penal Code maintains a prohibition against defaming any government institutions, political organizations or "heroes or martyrs of the Republic," which is also punishable by three months to one year in prison or fine.²¹⁹

Additionally, Article 319 typifies the crime of slander, providing that "[h]e who, knowingly, divulges false facts that result in the discredit of a person" will be punished with six months to two years in prison or a fine.

2. Insult

Cuba's Penal Code also criminalizes insults under its section on crimes against honor.²²⁰ Specifically, Article 321 states that "[h]e who, knowingly, in writing or verbally, through drawings, gestures or acts, offends another in his honor," will be punished with three months to one year in prison or a fine.

3. Contempt of Authority

In addition to the abovementioned provisions, Cuba's Penal Code also punishes slander, defamation, insult, injury "or any other mode of scornful or offensive expression" against high-ranking public officials with up to three years in prison.²²¹ In particular, Article 144 punishes this conduct with three months to one year in prison and/or a fine when it is directed against a public official. However, when the conduct is directed against the President or other senior officials the punishment is of one to three years in prison and/or fine. This provision has been deemed among the most troubling for press freedom due to its vagueness and seemingly limitless application.²²²

4. Other Relevant Laws

Cuban laws include other far-reaching criminal provisions that have been used to restrict the exercise of freedom of expression. For example, Cuba maintains prohibitions against dissemination of "false news" with the aim to "disturb international peace" or "endanger the prestige of, or discredit, the Cuban state."²²³ This offense is punishable with one to four years in prison. Moreover, Article 103 of the Penal Code sets out penalties of up to 15 years of imprisonment for engaging in "enemy propaganda."²²⁴ Similarly, the 1997 Law of National Dignity provides for prison sentences of three to ten years for "anyone who, in a direct or indirect form, collaborates with the enemy's media," which is aimed at independent news agencies that send their material abroad.²²⁵

Of particular concern are Article 91 of the Penal Code, which imposes lengthy prison sentences or death for those who act against “the independence or the territorial integrity of the state,”²²⁶ and Law 88 for the Protection of Cuba’s National Independence and Economy, which imposes up to 20 years in prison for passing information to the U.S. government, or looking for classified information, “aimed at breaching the internal order, destabilizing the country and ending the Socialist State and the independence of Cuba.”²²⁷

Lastly, Cuba’s Penal Code offers several other criminal provisions that have been used to restrict freedom of expression and freedom of peaceful assembly and association,²²⁸ such as charges of rebellion,²²⁹ clandestine printing,²³⁰ pre-criminal social dangerousness,²³¹ illicit associations, reunions and demonstrations,²³² resistance²³³ and spying.²³⁴

B. Enforcement of Criminal Defamation Laws

Cuba’s legal and institutional structures are firmly under the control of the executive branch. Laws criminalizing defamation, contempt and “enemy propaganda” have been extensively used to restrict freedom of speech under the guise of protecting state security.

Over the years, hundreds of individuals have been imprisoned in Cuba for the peaceful expression of their views. Harassment, intimidation, arbitrary detention, and criminal prosecutions all continue to be used to restrict the expression and distribution of information or opinions critical of the government. Those targeted are dissidents and critics, in many cases independent journalists and political and human rights activists.

In Cuba, most criminal prosecutions threatening freedom of speech have included charges of contempt, under Article 144 of the Penal Code, or “enemy propaganda,” under Article 115, or of acting against “the independence or the territorial integrity of the state,” under Article 91, which is often used in conjunction with Law 88. Moreover, most of the criminal prosecutions for defamation refer to the defamation of public institutions, organizations, national heroes and martyrs, which is also often used in conjunction with other provisions to curb freedom of expression by preventing public debate and criticism of the authorities and of government policies.

A recent and prominent example of the use of criminal defamation and “*desacato*” laws to harass journalists in Cuba is the case against Calixto Martínez Arias. Calixto Martínez Arias, an independent Cuban journalist, was jailed by the Cuban government on September 16, 2012 for reporting on a new cholera outbreak on the island and related allegations that medicine provided by the World Health Organization to fight the outbreak was not being distributed. Martínez was accused of contempt for disrespecting former leader Fidel Castro and his brother, President Raúl Castro, in contravention of Article 144 of the Penal Code. He faced up to three years in prison. However, prominent human rights activist Elizardo Sánchez Santa Cruz, President of the Cuban Commission on Human Rights and National Reconciliation in Havana, told CPJ that Martínez Arias was arrested for his journalistic work.

The international community criticized Martínez Arias' imprisonment and called on the Cuban authorities for his immediate release. He was finally released on April 9, 2013, having never been formally charged.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Cuba's criminal defamation legislation does not expressly address Internet or Mobile communications. However, the 1997 Law of National Dignity provides for prison sentences of up to ten years for "anyone who, in a direct or indirect form, collaborates with the enemy's media," which is aimed at independent news agencies that send their material abroad.²³⁵

Digital media is starting to play a more important role in Cuba, bringing news of events in Cuba to the rest of the world. There is also a small but vibrant blogging community in Cuba, though their sites are hosted overseas and are mostly unavailable to local Cubans. While bloggers have yet to be jailed for their work, they often face harassment and intimidation. For example, some well-known dissident bloggers, such as Yoani Sánchez, was for years detained and prevented from traveling abroad, although that restriction was lifted along with requirements for exit visas in 2013.

Mobile phones were banned in Cuba until March 2008, when Raul Castro lifted the ban along on mobile phones and other consumer goods, and there is no indication that criminal defamation or "desacato" laws have been used or applied to mobile communications.

D. Status of Criminal Defamation Laws

The Cuban government has been unwilling to turn away from its longstanding suppression of free speech—even as its leaders talk of economic and political change. Accordingly, there have been no known efforts to amend or repeal Cuba's criminal defamation legislation, nor has there been any debate about decriminalizing defamation. In fact, despite fewer long-term detentions of journalists in recent years, CPJ has found that the government continues to aggressively persecute critical journalists, using methods such as arbitrary arrests, short-term detentions, internal deportations, house arrest, beatings, smear campaigns, and surveillance.

V. DOMINICA

A. Criminal Laws Restricting Freedom of Expression

The Libel and Slander Act makes defamation a criminal offense in Dominica.²³⁶ In addition, the Seditious and Undesirable Publications Act criminalizes certain acts of libel against the State.²³⁷

1. Defamation

Under the Libel and Slander Act, any person who maliciously publishes any defamatory libel may face a fine and up to a year in prison.²³⁸ If the person who maliciously publishes defamatory libel knew the statement to be false at the time of publication, that person may face up to two years imprisonment.²³⁹

2. Seditious Libel

Under the Seditious and Undesirable Publications Act, statements which “rais[e] discontent or disaffection” among inhabitants or “promote feelings of ill-will” between different classes of the population are also criminalized if such statements are made by means of any “willful misrepresentation of facts or [if they concern] the motives or intentions of the Government.”²⁴⁰ An act or publication is not seditious if the accused individual intends only to show that the Government “has been misled or mistaken” or to “point out, with a view toward their removal by lawful means, matters which are producing . . . feelings of hatred and ill-will between different classes or races.”²⁴¹

B. Enforcement of Criminal Defamation Laws

It appears that the criminal defamation laws are not applied in Dominica. Moreover, according to the International Press Institute’s 2013 mission report on the Caribbean, no criminal prosecutions have been brought against journalists in Dominica in the last fifteen years.²⁴² However, anecdotal evidence exists that journalists and media workers in Dominica feel threatened by the existence of criminal defamation laws, even though such laws have not been actively enforced.²⁴³

Moreover, civil defamation laws have allegedly been used to influence journalists. In 2007, the former Prime Minister of Dominica, Roosevelt Skerrit, was criticized for an alleged relationship with a Bahamian businessman.²⁴⁴ The publisher of The Sun newspaper refused to publish an article on the topic after receiving a letter from a lawyer purporting to represent the Prime Minister.²⁴⁵ The following year, the Prime Minister filed libel suits against The Times of Dominica and its editor, Matt Peltier, after the newspaper published articles questioning the propriety of large value land acquisitions made by the Prime Minister given his comparatively small salary. These lawsuits against the Times of Dominica have “accentuated concerns about the increasing use of libel laws to deter critical journalism.”²⁴⁶

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Neither the text of the Libel and Slander Act nor the text of the Seditious and Undesirable Publications Act distinguish between the publication of libelous statements in different types of media; therefore, as long as an Internet communication can be construed as a “libelous publication,” it is likely that such communications could be considered within the type of conduct criminalized by the Act.

D. Status of Criminal Defamation Laws

No changes have been made to the criminal defamation laws in Dominica in the last ten years. However, the Media Workers Association of Dominica has recently called for the removal of criminal defamation laws in Dominica, in conjunction with similar efforts across the Caribbean organized by Association of Caribbean Media and the International Press Institute.²⁴⁷ Such efforts have not, as of yet, been successful.

VI. DOMINICAN REPUBLIC

A. Criminal Laws Restricting Freedom of Expression

Defamation remains a criminal offence in the Dominican Republic. In addition, the Penal Code criminalizes both seditious libel and acts offending the President of the Republic and other public authorities.

1. Defamation and Insult

The Dominican Republic's Law No. 6132 on Expression and Diffusion of Thought and the Penal Code expressly criminalize defamation, with the former law providing that defamation "is all allegation or imputation of a fact, which attack the honor or consideration of the person or the entity to whom the fact is imputed."²⁴⁸ Law 6132 further notes that "the publication or radio diffusion, directly or through reproduction," of this kind of defamatory allegation or imputation is punishable, "even when made in a doubtful manner or if it alludes to a person or entity not mentioned expressly, but whose identification is possible based on the terms of the speech, shouting, radio-emissions, movies, writings or the prints, posters or edicts incriminated."²⁴⁹ Defamation against individuals is punishable with 15 days to six months of imprisonment and/or a fine of RD\$25.00 to RD\$200.00 (approximately US\$0.50 to \$4.50).²⁵⁰ However, defamation of a group of people who belong to a race or religion due to their origins, will be punished with a month to a year in prison and a fine of RD\$25.00 to RD\$200.00 (approximately \$0.50 to \$4.50) when it seeks to incite feeling of hatred in the population.²⁵¹

Law 6132 also criminalizes insult and defines it as constituting "all expression of offence, denigration or invective term that does not entail the imputation of any fact."²⁵² Insult against individuals, not preceded by provocation, is punishable with 5 days to two months of imprisonment and/or a fine of RD\$6.00 to RD\$50.00 (approximately US\$0.13 to \$1.12).²⁵³ Imprisonment will be of up to six months and the fine of up to RD\$100.00 (approximately US\$2.25) if the insult is committed with the purpose of inciting feeling of hatred in the population, in prejudice of groups of people that belong to a specific race or religion due to their origins.²⁵⁴

2. Seditious libel and Insult of Authority

Law No. 6123 also criminalizes offending the President of the Republic through any of the

means listed in the Law,²⁵⁵ which is punishable by imprisonment of three months to a year and/or a fine of RD\$100.00 to RD\$1,000.00 (approximately US\$2.25 to \$22.50).²⁵⁶ The Penal Code similarly criminalizes defaming or insulting the President of the Republic, which entails not only a prison sentence and/or this fine but also the loss of certain civic and civil rights, including the right to vote and stand in elections, to exercise public office, to serve as a witness, etc.²⁵⁷

Defamation of courts, armed forces, national police, legislative chambers, municipalities and other state institutions is punishable with imprisonment of one month to one year and/or a fine of RD\$50.00 to RD\$500.00 (approximately US\$1.12 to \$11.25).²⁵⁸ It is equally punishable to defame specific public officials and individuals listed in the Law, if the defamation is made in connection with the functions or quality of the defamed persons.²⁵⁹ Insult of these state institutions and individuals is punishable by imprisonment of six days to three months and/or a fine of RD\$6.00 to RD\$60.00 (approximately US\$0.13 to \$1.35).²⁶⁰

Moreover, the defamation of members of Congress, Secretaries of State, Supreme Court judges, or heads of state of friendly nations is punishable with prison of one to six months and a fine of RD\$50.00 (approximately US\$1.12).²⁶¹ Insult of the abovementioned is punishable by eight days to three months imprisonment and a fine of RD\$20.00 to RD\$100.00 (approximately US\$0.45 to \$2.25).²⁶²

3. *Desacato*

The Dominican Republic's Penal Code also criminalizes offending public authority. Specifically, Article 222 punishes offending the honor or sensitivity of administrative or judicial magistrates related to their public function with a prison term of six days to six month. If the offense is made during a court hearing, the sanction will be of six months to a year in prison. Further, if such an offense is made through gestures or threats, the prison term will be six days to three months in prison, or up to a year if the offense is made during a court hearing.²⁶³

Pursuant to Article 224, the Penal Code punishes offending lawmakers or agents of public authority through words or gestures, with relation to those officials' public function, with a fine of RD\$10.00 to RD\$100.00 (approximately US\$0.22 to \$2.20). The punishment will include imprisonment of six days to a month if the aggrieved is a commander of the public forces.²⁶⁴

4. *Other Relevant Provisions*

Under Law No. 6132, the Dominican Republic also penalizes the offense to 'good morals' with one month to one year in prison plus a fine.²⁶⁵

Further, pursuant to Article 27 of the Law, the publication, diffusion or reproduction, through false news, of documents fabricated, falsified or falsely attributed to third parties, when it disturbs the public peace, will be punishable with six months to two years in prison and/or a

fine of RD\$100.00 to RD\$1,000.00 (approximately US\$2.25 to \$22.50).²⁶⁶ This same conduct will be punishable by one to two years in prison with a fine of RD\$100.00 to RD\$1,000.00 (approximately US\$2.25 to \$22.50) when the publication, diffusion or reproduction, disrupts the discipline or morale of the armed forces or prejudices the nation's war efforts.²⁶⁷

5. Defenses

The Penal Code expressly states that for criminal defamation provisions to apply the defamation or insult must have been publicized.²⁶⁸ Additionally, the Code establishes a number of defenses to criminal defamation, including absolute and qualified privilege.²⁶⁹

Finally, Law 6132 includes other defenses to criminal defamation, including the truth of the defamatory matter and good faith.²⁷⁰

B. Enforcement of Criminal Defamation Laws

In 2012, two journalists in the Dominican Republic were sentenced to prison on defamation charges. Johnny Alberto Salazar, a journalist for Nagua radio, was sentenced to six months in prison and a steep fine for allegedly libeling a local lawyer.²⁷¹ The case centered on comments Salazar made on his radio program alleging that the lawyer, Pedro Baldera Gomez of the Nagua Human Rights Commission, had defended a number of thieves in the area. However, an appeals court in the Dominican Republic threw out the criminal defamation conviction

Two other journalists, Robert Vargas and Genris García, settled out of court criminal defamation charges brought by Canadian clothing manufacturer Gildan Activewear.²⁷² The case stemmed from articles the journalists posted on their websites claiming that an assassination attempt on another journalist had occurred while he was investigating possible environmental contamination by the company at its factory in Santo Domingo Province.²⁷³

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Criminal defamation legislation in the Dominican Republic does not expressly cover Internet or mobile communications. However, it is possible that the established means by which criminal defamation and insult may be committed could be interpreted expansively to include such forms of communication.

D. Status of Criminal Defamation Laws

Despite an initial consideration of legal amendments that would impose harsher penalties for defamation, in 2013 Dominican Republic legislators declared their intention to repeal all criminal defamation and insult laws in the Penal Code.²⁷⁴ Reforms to criminal defamation provisions under Law No. 6132 have also been under discussion, as part of a proposed "communications code" that would modernize and consolidate statutes related to the press.²⁷⁵ However, to this date, no such amendment has been enacted.

VII. GRENADA

A. Criminal Laws Restricting Freedom of Expression

Until 2012, both defamation and seditious libel existed as separate crimes under Grenada's Criminal Code. The passage of the Criminal Code (Amendment) Act of 2012, however, repealed the crimes of negligent and intentional defamation, although it left in place the crime of seditious libel.²⁷⁶ In 2013, Grenada's legislature passed the Grenada Electronic Crimes Bill of 2013, Section 6 of which criminalizes "grossly offensive" or "menacing" information communicated through electronic means and provides for a potential one-year term of imprisonment.²⁷⁷ Although limited to "electronic" publication, this new offense may have the potential to operate as the functional equivalent of criminal defamation.

Even under the prior statutory regime, the Grenada Constitution, Section 10(1), protected freedom of expression broadly,²⁷⁸ but contained a reputation-based exception. Section 10(2) of the Grenada Constitution provides that no law shall be held inconsistent with Section 10 which "is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons . . ." The scope of constitutional protection remains unchanged.

1. Defamation

As noted above, the 2012 amendment of the Grenada Criminal Code decriminalized negligent and intentional defamation by repealing Sections 252 and 253 of the Grenada Criminal Code.²⁷⁹ Prior to the appeal, Section 252 provided that the punishment for "negligent libel" was six months' imprisonment, while the punishment for "intentional libel" was two years' imprisonment.²⁸⁰ Section 253 defined libel as the unlawful publication of "any defamatory matter concerning another person."²⁸¹ Matters are considered "defamatory" where they "impute ... to a person any crime, or misconduct in any public office" or are "likely to injure him in his occupation, calling, or office, or to expose him to general hatred, contempt or ridicule."²⁸²

Grenada also has a statute governing civil actions for defamation and this statute includes provisions governing criminal liability. The Act criminalizes a newspaper's publication of the particulars (with exceptions) of marital proceedings and "indecent matter[s]" or "indecent medical, surgical or physiological details" arising out of judicial proceedings more generally, making such acts punishable by imprisonment for four months and a fine of \$24,000.²⁸³ However, Section 17 of that Act provides that no criminal prosecution may proceed against a person responsible for the publication of a newspaper for allegedly libelous materials contained therein without the approval of the Attorney General.²⁸⁴

2. Seditious Libel

Section 327 of the Grenada Criminal Code criminalizes seditious libel and being a party to a seditious assembly. The punishment for such crimes is two years' imprisonment.²⁸⁵

3. *Defenses or Privileges to Libel*

The Criminal Code provides that certain types of publications, all of which involve a publication performed in some official capacity (e.g., a Senate report), are “absolutely privileged.” This means that no criminal liability shall attach to such publications, whether the material contained therein is true or false.²⁸⁶ A matter that is true and whose publication is found by a jury to be “for the public benefit” is also absolutely privileged.²⁸⁷

Certain other types of specifically enumerated publications or statements may be privileged if made in good faith.²⁸⁸ A party fails to act in good faith where the matter published was untrue and the party did not believe it to be true or failed to take reasonable care to ascertain the matter’s truth, or where the party has acted with an intent to injure the person defamed and the publication of the defamatory material was not reasonably necessary for the public interest or the protection of a private right or interest.²⁸⁹

B. Enforcement of Criminal Defamation Laws

While the privilege provisions of Sections 257 to 259 appear to be in effect still, as a practical matter, they likely will see little application in the future given the repeal of Section 252 (concerning negligent libel). However, Section 258 is still relevant in prosecutions under Section 327 for seditious libel, as Section 258 provides that no publication that is prohibited by a court on the grounds that such publication is seditious shall be privileged.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

The passage of the Grenada Electronic Crimes Act of 2013 has arguably created a more limited offense of criminal defamation. Section 6 of the Act provides that “[a] person shall not knowingly or without lawful excuse or justification send by means of an electronic system or an electronic device... information that is grossly offensive or has a menacing character.”²⁹⁰ Although the Act does not on its face target newsgathering or reporting, the broad, undefined language of Section 6 could be applied to online reporting or other journalism, as well as commenting on websites or blogs. Moreover, the Act does not explicitly provide that news reporting constitutes a “lawful excuse or justification.” Offenses under Section 6 are punishable by a fine of \$100,000 (approximately US\$37,000) and a one-year term of imprisonment.²⁹¹

D. Status of Criminal Defamation Laws

Section 6 Electronic Crimes Act of 2013 provoked criticism from media and other free speech advocates when it was released in draft form. Although the government subsequently promised to reexamine Section 6 to ensure that it did not inhibit free speech, the Act was passed and implemented as originally drafted.²⁹²

VIII. JAMAICA

A. Criminal Laws Restricting Freedom of Expression

Between 2011 and 2013, Jamaican law on libel and its protections for freedom of expression changed significantly. New legislation repealed both prior laws criminalizing libel and amended Jamaica's constitutional provisions concerning freedom of expression. Those constitutional provisions contained broadly worded exceptions, discussed further below, limiting the scope of the Constitution's protection of freedom of expression, however, and the reform of the criminal code left in place civil libel laws that have been used to obtain multimillion-dollar judgments against journalists.

1. Defamation

In early November 2013, legislation repealed the Libel and Slander Act and replacing it with a new set of civil standards and protections.²⁹³ One of the key purposes of the Bill's passage was to decriminalize libel.²⁹⁴ The Libel and Slander Act had criminalized the malicious publication of "defamatory libel" and defined a number of related crimes, such as threatening to publish libel with the intent to procure an appointment or office. The repealed Act also made such crimes punishable in some cases by up to three years' imprisonment.²⁹⁵

In 2011, two years prior to the repeal of criminal libel provisions, Jamaica's constitution was amended. Prior to 2011, the Jamaican constitution contained a reputation-based exception to freedom of expression:

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision . . . which is reasonably required . . . for the purpose of protecting the reputations, rights and freedoms of other persons . . ."²⁹⁶

Passage of the 2011 Charter of Fundamental Rights and Freedom Act functioned to repeal Chapter III, Section 22 in its entirety and replaced it with Chapter III, Section 13, which prohibits Parliament from passing any law and any "organ of the State" from taking any action infringing the right to freedom of expression.²⁹⁷ Section 13 contains a limitations clause, however, that is applicable to freedom of expression. Section 13 states that guarantees of freedom of expression apply only "to the extent that those rights and freedoms do not prejudice the rights and freedoms of others."²⁹⁸ It also allows for laws to be passed, and governmental action taken, which infringe those rights "as may be demonstrably justified in a free and democratic society."²⁹⁹ Section 13 also cannot be used to invalidate any law passed prior to Act 12 of 2011 which relates to "obscene publications."³⁰⁰

2. Defenses or Privileges to Libel

As noted above, in November 2013, the Jamaican Parliament passed legislation repealing the Libel and Slander Act, which criminalized libel. A different but similarly titled law, the Defamation Act, establishes a number of defenses and privileges applicable to civil actions for libel, slander, and defamation.³⁰¹ The Defamation Act establishes that truth and fair comment (i.e., expressions of opinion), respectively, are defenses to actions for libel and slander.³⁰² Certain types of newspaper publications are treated as privileged unless made with malicious intent.³⁰³

The Defamation Act also provides that a party who has innocently published defamatory language may make “an offer of amends,” which must include an offer to publish a correction of the allegedly defamatory statements and an apology to the aggrieved party. The offer of amends serves as a defense to a lawsuit if this offer is accepted by the aggrieved party or made promptly after notice that the publication was, or might have been, defamatory.³⁰⁴ The Defamation Act’s “offer of amends” defense parallels similar provisions from the since repealed Libel and Slander Act, which permitted defendants charged with crimes to mitigate damages and possibly also establish defenses, through making or offering an apology.³⁰⁵

B. Enforcement of Criminal Defamation Laws

Prior to the November 2013 passage of legislation repealing libel-related crimes, discussed supra, criminal libel laws were not often used.³⁰⁶ High-profile decisions from civil libel proceedings against journalists in Jamaica include the Committee of the Privy Counsel’s 2003 decision in *Gleaner v. Abrahams*, in which the Committee upheld the Court of Appeal of Jamaica’s reduction of an award of civil damages against two Jamaican newspapers, who “accepted . . . that publication was wrongful and fell outside the permissible limits of section 22(1) [of the constitution],” from J\$80.7 million to J\$35 million (approximately US\$670,000 to US\$200,000).³⁰⁷ In another high-profile decision, the Privy Counsel held in 2002 that a leading Jamaican newspaper’s coverage of a lawsuit, while defamatory, was entitled to the defense of qualified privilege.³⁰⁸

IX. ST. LUCIA

A. Criminal Laws Restricting Freedom of Expression

Criminal defamation and seditious libel remain on the books in St. Lucia and penalties for these offenses in the Criminal Code of St. Lucia are the harshest for similar offenses among English-speaking Caribbean nations.³⁰⁹ Although there have been no prosecutions for these offenses in St. Lucia in recent years, there has been some indication that the government of St. Lucia uses the very existence of these laws to pressure media outlets.³¹⁰

1. Defamation

Under the St. Lucia Criminal Code, a person who either negligently or intentionally publishes defamatory matter concerning another person is guilty of libel.³¹¹ Libel committed negligently is punishable by two years in prison,³¹² while intentional libel carries a penalty of five years, the harshest penalty for a criminal defamation offense amongst English-speaking Caribbean nations.³¹³

A matter is “defamatory” if it imputes to another person (1) misconduct in any public office, (2) matters which are likely to injure that person in his or her occupation, or (3) matters that would expose that person to “general hatred, contempt, or ridicule.”³¹⁴

Defamatory matter is considered “published” when a person causes that material to be exhibited, read, recited, described, or delivered such that the matter “becomes known or is likely to become known” to someone other than the person defamed.³¹⁵ Significantly, actions limited solely to gestures, spoken words, or other sounds are not considered “published” under the statute.³¹⁶

A person may be guilty of libel under the Code even where the defamed person is deceased, provided the guilty party had intent to bring contempt onto the relatives of the deceased to “provoke [the relatives] to a breach of the peace.”³¹⁷

The Criminal Code adds to these general libel laws several provisions specific to newspapers, books, and periodicals. The proprietor of a newspaper, for example, is presumed to be criminally responsible for defamatory material in the newspaper, unless the proprietor did not have knowledge of the defamatory material and was not negligent.³¹⁸ A proprietor is negligent if it gave its editor discretion to select materials for publication, and either intended for that discretion to be used to publish defamatory matter or continued to grant the discretion after knowing it had been exercised to defame.³¹⁹ Sellers of newspapers, books, or periodicals are not liable unless they had knowledge of defamatory material within or, in the case of a newspaper, knew the newspaper regularly contained defamatory matter.³²⁰ Further, a liable seller does not subject his or her employer to liability unless the employer had knowledge of the defamatory material sold or, in the case of a periodical, knew the periodical has regularly contained defamatory matter.³²¹

2. Seditious Libel/Insult to Authority

As with nearly all Caribbean countries that have retained the British monarch as head of state, St. Lucia specifically outlaws speech that insults the state or sovereign. Section 305 of the Criminal Code makes libel or assembly with a seditious purpose punishable by five years in prison. Seditious assembly involves either the assembly of five or more persons for a seditious purpose, or assembly where seditious libel or seditious speeches are made.³²² Similarly, Section 329 of the Criminal Code establishes a separate offense, punishable by five years in prison, for publishing defamatory or insulting matter concerning the Governor-General with intent to bring the Governor-General into hatred, contempt, or ridicule.³²³

3. *Defenses or Privileges to Libel*

The Criminal Code provides that if the defamatory matter is true, and the person publishing it can show “that it was for the public benefit that the matter should be published in the manner in which and at the time when it was published,” then the publication is considered justified and no liability attaches.³²⁴

In addition, the Criminal Code provides for absolute and conditional privileges to criminal libel offenses, except seditious libel.³²⁵ The absolute privilege exempts from liability the publication of defamatory matter by the Governor-General, Cabinet, or Parliament, as well as the publication of reports or statements made in Cabinet or Parliament.³²⁶ The absolute privilege also covers publications by persons acting in a judicial proceeding as a Judge or Magistrate, Attorney-General, public prosecutor, juror, or witness.³²⁷ Where an absolute privilege applies, it is immaterial for purposes of the criminal defamation laws whether the matter is true or false.³²⁸

The conditional privilege protects publications made in good faith under various circumstances. These circumstances include: good faith complaints about someone’s conduct made to a party with legal authority to receive complaints about such conduct; good faith statements made in a legal proceeding about the conduct of a party or witness; opinions in critical reviews of artistic or literary works; statements by counsel in a legal proceeding; and statements regarding conduct of a public official or any person in relation to a public issue, provided the statement concerns only the person’s character as it appears from such conduct.³²⁹ The conditional privilege also extends to publication of a copy, reproduction, or abstract of matter protected by the absolute privilege.³³⁰

Unlike the absolute privilege, the “good faith” requirement of the conditional privilege imposes some limits related to the truth of the underlying matter. For example, good faith will not be found where the matter published was untrue and the person publishing it either did not believe it to be true, or did not take reasonable care to ascertain whether it was true or false.³³¹ Lack of good faith will also be found where the person published the matter with intent to injure the targeted person to a greater degree than necessary “for the interest of the public or for the protection of the private right or interest in respect of which he or she claims to be privileged.”³³²

B. Enforcement of Criminal Defamation Laws

According to a November 2013 report by the International Press Institute that included a survey of criminal defamation prosecutions dating back to at least 1999, there have been no recent prosecutions under the criminal defamation laws of St. Lucia.³³³

At least one St. Lucia-based journalist has claimed that although no prosecutions for defamation have occurred in the last 25 years, journalists are frequently sued for libel or threatened with criminal charges.³³⁴

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

St. Lucia's criminal defamation laws are likely to apply to Internet and mobile communications. Section 315 of the Criminal Code defines "publication" for the purposes of the criminal libel provisions as the "print, writing, painting, effigy or other means by which the defamatory matter is conveyed" as long as that means makes "the defamatory meaning . . . known or . . . likely to become known to the person other than the person defamed" (emphasis added).³³⁵ Electronic communications in general appear to fit into this definition.

D. Status of Criminal Defamation Laws

St. Lucia's criminal defamation laws have remained largely unchanged in the last ten years. In 2005, however, the Criminal Code was amended to add Section 361, which made it an offense punishable by a prison term "not exceeding two years" for anyone, including journalists, to spread information "that he or she knows is false and causes or is likely to cause injury to a public interest."³³⁶ At the time, then-Prime Minister Kenny Anthony had accused "certain select persons in the media" of engaging in a disinformation campaign designed to undermine his ruling Labor Party.³³⁷ The government's lawyer, Anthony Astaphan, also stated that "[t]he media in modern times must be never taken for granted as spreading the gospel truth" and described St. Lucia's media as one of "mass deception."³³⁸ However, in November 2006, under intense criticism from journalists and press freedom activists, Anthony's government repealed Section 361, claiming that it was too difficult to enforce.³³⁹

X. HAITI

A. Criminal Laws Restricting Freedom of Expression

Haiti's constitution³⁴⁰ expressly guarantees freedom of expression, freedom of the press,³⁴¹ as well as a reporter's privilege against revealing sources,³⁴² it nevertheless criminalizes certain forms of libel. Indeed, "[a]ll offenses involving the press and abuses of the right of expression come under the code of criminal law."³⁴³

1. Criminal Libel (or Slander)

Under the Haitian Penal Code,³⁴⁴ criminal libel (or slander) is defined as the act of attributing to someone "facts that undermine his honor and esteem."³⁴⁵ Truth, public knowledge, or the fact that the assertions are copied or excerpted from foreign press, cannot be raised as defenses.³⁴⁶ In addition, one who uses foreign press to defame will be liable to the same extent as if it were a purely domestic act.³⁴⁷

In general, the punishment envisioned by the Haitian Penal Code for criminal libel (or slander) ranges from six months to three years. For instance, defendants accused of imputing to an individual serious crimes (such as those punishable by death or forced labor for life), face up

to three years in prison.³⁴⁸ In all other cases, the prison term will be from six months to one year.³⁴⁹

2. Slander Against Law-Enforcement or Judicial Authorities

The Haitian Penal Code contains a notable provision making it a crime to direct “slandering accusation” against law-enforcement or judicial authorities.³⁵⁰ Such act can lead up to one year in prison³⁵¹ and the loss of certain civil rights.³⁵²

3. Insult

Haiti’s Penal Code maintains a separate offense for insult. The Penal Code provides that “insults or offensive expressions which do not contain an allegation of specific facts” may be punishable if they are of (i) a “particular vice” and (ii) “widespread and distributed.”³⁵³

The punishment for “widespread” insults of a “particular vice” is imprisonment of one month to one year.³⁵⁴ When both elements of the definition of “insult” are not found, only pecuniary penalties are imposed.³⁵⁵

4. Seditious Libel or “Desacato”

The Haitian Penal Code contains specific provisions regarding insults directed against magistrates of the administrative or judicial orders. Any insult, whether oral or in writing, that tends to affect “honor or delicacy” is punished.³⁵⁶ Interestingly, the Penal Code distinguishes between insults made orally or in writing from insults through gestures or threats.³⁵⁷ In addition, insults against “high officials,” whether made orally or in writing or through gestures or threats are punished more severely.³⁵⁸

Oral or written insults are punishable by a prison term of three months to one year.³⁵⁹ Insults through gestures or threats are punished by a prison term of one month to one year.³⁶⁰ Finally, insults against “high officials” result in a prison term of one to three years.³⁶¹

B. Enforcement of Criminal Defamation Laws

The only known criminal prosecution for defamation took place in 2008.³⁶² In December 2008, a Port-au-Prince court sentenced Guyler Delva, a wire correspondent, to one month in prison for defaming a former Haitian Senator by reporting that the senator had failed to testify about the unsolved slaying of Haitian journalist Jean-Leopold Dominique in 2000.³⁶³

In addition to the foregoing application of criminal charges to press activity, certain press freedom advocacy organizations report that suits for civil defamation are often brought against journalists. A report released on September 2012,³⁶⁴ alleges many “retaliatory defamation lawsuits” are filed by the government.³⁶⁵ The U.S. Department of State has echoed this allegation, reporting that in Haiti, “[j]ournalists complained about an increase in defamation

lawsuits that the government threatened or filed against the press for statements made about public officials or private figures in the public arena.³⁶⁶

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

According to the Penal Code, it appears that the provisions related to criminal libel (or slander), slander against law-enforcement or judicial authorities, insult, and seditious libel or “*desacato*” apply to the Internet and/or mobile communications because the definitions for two of these categories include “writing”³⁶⁷ and the two others include “in writing whether printed or not.”³⁶⁸ “Writing” could itself mean any forms of writing. “In writing whether printed or not” is even more explicit in that it includes other forms of messages.

However, while there are no government restrictions on the Internet, as of 2011, only 8.6 percent of the population had access to the Internet in Haiti.³⁶⁹

D. Status of Criminal Defamation Laws

Haiti’s criminal defamation laws have remained unchanged in the past ten years, and the government appears unlikely to reform these laws. On the contrary, the Minister of Justice recently reaffirmed that criminal prosecution of defamation, slander and insult would continue.³⁷⁰

XI. TRINIDAD AND TOBAGO

A. Criminal Laws Restricting Freedom of Expression

Criminal defamation laws in Trinidad and Tobago are contained in the Libel and Defamation Act of 1845.³⁷¹ Depending on whether the author of the defamatory statement has knowledge of its falsity, the sentence varies.

On the one hand, if any person maliciously publishes any defamatory libel, knowing the libelous statement to be false, he may be convicted and sentenced to imprisonment for two years, as well as fined at the discretion of the court.³⁷² If any person maliciously publishes any defamatory libel, without knowing it to be false, he may be convicted and sentenced to imprisonment for one year, as well as fined for the offense.³⁷³ This law is a near exact replica of the British Libel Act 1843, sometimes referred to as the Lord Campbell’s Act, which was repealed in England & Wales in 2009.

B. Enforcement of Criminal Defamation Laws

Although there have been numerous instances of civil suits for defamation and numerous pre-action protocol letters (letters threatening civil suit) issued against journalists, no criminal prosecutions against journalists appear to have taken place.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Criminal defamation laws apply to Internet and/or mobile communications though challenges relating to proof of authorship may arise. Liability has been established for Internet communications in previous civil suits.

D. Status of Criminal Defamation Laws

Trinidad and Tobago has not made changes to criminal defamation or “*desacato*” legislation in the past ten years. However, there is currently a Libel & Defamation (Amendment) Bill 2013 which seeks to amend the Libel and Defamation Act of 1845 to abolish the criminal offence of malicious defamatory libel, by repealing its section 9. The Bill was last read but not debated in the House of Representatives on September 6, 2013.³⁷⁴

SOUTH AMERICA

CENSURADO

Prohíben publicar imágenes y noticias sobre la violencia

El titular de la Comisión de Protección de Niños, Niñas y Adolescentes impide a El Nacional y a los demás diarios solo imágenes

I. ARGENTINA

A. Criminal Laws Restricting Freedom of Expression

Argentina's Law 26.551 of November 2009 amended articles 109 to 117 of the Criminal Code to eliminate criminal sanctions for libel and slander, replacing them with monetary penalties.

1. Libel

Libel consists of "attributing to another person a specific crime" that is subject to "ex officio prosecution"³⁷⁵—that is, that the State may begin the prosecution without a criminal complaint from the affected individual. Libel may result in fines varying from 3,000 to 30,000 Argentinean pesos (equivalent to US\$380 to US\$3,800).³⁷⁶

2. Slander

Slander consists of "intentionally dishonoring or discrediting" a person, and may be punished with fines ranging from 1,500 pesos to 20,000 pesos (approximately between US\$190 and US\$2,500).³⁷⁷

B. Enforcement of Criminal Defamation Laws

A number of cases in Argentina indicate a change of perception concerning the punishment of journalists on the basis of libel and slander. These cases have also helped pressure Congress to decriminalize libel and slander in cases concerning matters of "public interest"—that is, matters that concern the community as a whole or the public good. However, in what has been viewed as a setback, the Inter-American Court of Human Rights ("IACHR") ruled in 2013 for the first time in the *Carlos and Pablo Mémoli v. Argentina* case that a criminal sanction for defamation did not affect freedom of expression as established in Article 13 of the American Convention on Human Rights.³⁷⁸

1. *Ricardo Echegaray v. Longoni and Majul*

In December 2012, Ricardo Echegaray, the head of the Federal Revenue Administration (AFIP), sued journalists Matías Longoni and Luis Majul for almost \$275,000 each, in separate cases, claiming that they had damaged Echegaray's reputation. These reporters had previously written about Echegaray and the AFIP: Longoni's reporting on irregularities by a state office in awarding subsidies previously headed by Echegaray had formed the subject of a 2011 book, while Majul had accused the AFIP of exerting financial pressure on his production company. The press freedom group Argentine Journalism Forum (FOPEA) denounced Echegaray's lawsuits as abuses of the judicial system.³⁷⁹ On January 3, 2013, the newspaper *La Nación* reported that the Buenos Aires Federal Chamber had annulled the lawsuit against Luis Majul on the basis of a breach of due process.³⁸⁰

2. *Carlos Menem v. Editorial Perfil*

In 1995, former President Carlos Menem filed a lawsuit against two journalists from *Noticias*, an Argentine weekly magazine covering politics and social developments, for invasion of privacy. The statements made by the *Noticias* journalists in *Editorial Perfil* pertained to President Menem. These reported on the president's alleged out-of-wedlock child, as well as facts concerning financial support to the mother of the child.³⁸¹ The trial court dismissed the defamation claim; however, the Court of Appeals ordered payment of \$150,000 in damages based on the invasion of the president's privacy.³⁸² In September 2011, the Supreme Court of Justice Press confirmed the decision of the Court of Appeals.³⁸³ Press freedom groups were concerned that the case could set a negative precedent for privacy issues involving public figures.³⁸⁴ On November 15, 2001, the two journalists applied to the Inter-American Commission on Human Rights complaining of a violation of Article 13 of the American Convention on Human Rights, which protects the right to freedom of thought and expression. The petition was admitted on October 12, 2005 and transferred to the Inter-American Court of Human Rights (the "IACHR"). On November 29, 2011, the IACHR issued a judgment unanimously finding that Argentina had violated the journalists' right to freedom of expression under the Convention. In particular the IACHR observed that "the publications carried out by the magazine *Noticias* regarding the elected public official of the highest ranking position in the country involved matters of public interest, which were in the public domain and involving the alleged victim who, by way of his own conduct, had not contributed to protect the information that he later contests."³⁸⁵ The IACHR therefore concluded that the reporting did not constitute an "arbitrary interference" with the right to private life of President Menem.³⁸⁶

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

The country's legal framework and independent courts generally protect online freedom of expression, both in law and in practice, and Argentines have free access to a wide array of informational sources over the Internet. However, several court decisions in 2010 and 2011 restricted access to websites based on claims of defamation or intellectual property rights violations. One decision led to the accidental blocking of an entire blog-hosting platform. Notably, a series of injunctions issued in 2012 imposed liability on search engines to delete links from the results they present users, based on a theory of "intermediary liability" for the libelous or slanderous content contained in those links. The rulings drew criticism from both freedom of expression advocates and international companies like Google.³⁸⁷ In an important ruling on October 27, 2014, the Argentine Supreme Court ruled that search engines are not liable for linking to defamatory and/or unlawful websites unless the search engine has actual knowledge of the defamatory or infringing content based on notice from a judicial official. Only in cases involving clearly illegal content such as child pornography, a search engine will be held liable for linking to such content.³⁸⁸

D. Status of Criminal Defamation Laws

Libel and slander in cases concerning matters of public interest were decriminalized in 2009

and are no longer punishable by imprisonment, although fines can still be issued where “malice”—defined as a deliberate intention to harm another person—is found.³⁸⁹

Specifically, on November 18, 2009, Argentina adopted Law 26.551, which decriminalized libel and slander. The law amends the country’s Criminal Code, eliminating criminal sanctions (such as prison sentences) on the basis of libel and slander in cases concerning matters of public interest, and replacing the sanctions with fines. The law was adopted after a 2008 decision by the Inter-American Commission on Human Rights that ordered the Argentine government to revise its domestic law to prevent the use of criminal defamation laws to hinder the exercise of freedom of expression in a case concerning journalist Eduardo Kimel.³⁹⁰ Kimel was an Argentine journalist and writer who was convicted of slander and libel after publishing the book *The San Patricio Massacre* on the assassination of several Palotino priests in the San Patricio church during the Argentine dictatorship.

II. BOLIVIA

A. Criminal Laws Restricting Freedom of Expression

Bolivia’s Penal Code and Press Law currently contain provisions restricting freedom of speech.

1. Defamation

Article 282 of the Penal Code provides that publicly revealing a fact, a quality, or a conduct that may affect the reputation of an individual may be grounds for holding the offender liable.³⁹¹

2. Calumny

Article 283 of the Penal Code provides that whoever commits calumny, defined as falsely accusing an individual with “committing a crime,” may be punished with imprisonment ranging from six months to two years.³⁹²

3. Libel

Lastly, Article 287 defines libel as offending another person’s “dignity and dia-multa.” This is punishable by community service ranging from one month to a year, and a “diamulta” fine pursuant to Art. 29 of the Criminal Code ranging from 30 to 100 days.³⁹³

4. Defenses

Significantly, “the veracity [truth] of the facts” is not considered a defense in a defamation trial. The only relevant legal standard is whether the statement negatively affected someone’s reputation.³⁹⁴ A criminal offense can only be prosecuted until ten years from the date when the offense was committed.

Both the President and Congress may exercise a so-called “judicial pardon,” under certain circumstances, such as those involving political offenses. Congress is empowered to pardon offenders in either criminal or civil cases, provided the Supreme Court of Justice concurs. In accordance with Article 64 of the Penal Code, for crimes whose sanctions are lower than one year, a first offender may also receive a “judicial pardon” when there is a reasonable probability that the offender will not commit a crime again.³⁹⁵

In addition to Bolivia's Penal Code, the Press Law establishes a distinct way of prosecuting members of the press for crimes that infringe the honor of the victims. Passed in 1920,³⁹⁶ the Press Law's Article 27 concerns cases of libel and slander against individuals. It stipulates that a member of the press (such as a journalist) may choose either to be prosecuted by a body of jurors (called a "printing jury") or to be prosecuted by an ordinary court and be subjected to the Penal Code's penalties.

In contrast, the Press Law's Article 28 provides that in cases of libel and slander relating to "acts or functions of a public nature,"³⁹⁷ the plaintiff may only sue before a printing jury composed of 40 individuals selected by the City Council.

B. Enforcement of Criminal Defamation Laws

Bolivia's criminal defamation laws are generally enforced and cases against journalists seem to have become more common in past years.

1. *Molina v. Peláez*

In March 2012, a Bolivian magazine editor was sentenced to two-and-a-half years in jail for defaming a lawyer named Walter Molina. The editor had accused Molina of unduly collecting attorney fees while representing the government in a case involving a national social security program. Based on the title of the article, "Using the Law to Steal," the editor was convicted of defamation and imprisoned.³⁹⁸ The International Defamation Law Legal Database reported that this conviction "underscores the urgency with which Bolivia must revisit its criminal defamation laws."³⁹⁹

2. *The Case of Juan Pastén*

In July 2011, sports journalist Juan Pastén was arrested for libel and slander against Jorge Justiniano, president of Bolivia's National Soccer Association (ANF). Pastén had denounced alleged corruption in the management of the ANF's funds.⁴⁰⁰ After his arrest, Pastén was hospitalized after apparently suffering a nervous breakdown.⁴⁰¹ Pastén was ultimately found liable by a Bolivian court for libel, slander and defamation charges according to the Bolivian Penal Code and sentenced to pay a fine of 2,000 Bolivian Boliviano (approximately US\$290).⁴⁰²

3. *The Case of Agencia de Noticias Fides and Página Siete*

In August 2012, the government of President Evo Morales denounced the Agencia de Noticias Fides News Agency and the newspapers *Página Siete* and *La Prensa* for publishing a story that he alleged did "not reflect the true discourse" of President Morales. The government alleged that the defendants had distorted the president's words in a speech blaming hunger in eastern Bolivia on the laziness of the people in that region.⁴⁰³ The complaint specifically alleged the crime of dissemination and incitement to racism, which carries a punishment of imprisonment ranging from one to five years. The complaint was filed against legal representatives, publishers, and others connected to the case.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

The Constitution, Penal Code and other laws can be applied to news articles published online by the press. However, despite the Bolivian government's assertion that it is monitoring offensive statements against public officials online, as of the time of publication there have not been any cases of Internet censorship.

D. Status of Criminal Defamation Laws

Ever since 2012, freedom of the press in Bolivia has been deteriorating as the government appears to be using the 2010 "Law against Racism and All Forms of Discrimination" to intimidate and stifle the media. However, in 2012, the Plurinational Constitutional Court declared Article 162 of the Penal Code unconstitutional. Article 162 had specifically prescribed punishments for individuals who committed libel, slander or defamation against public officials. Decision 1250/2012 of September 20, 2012 held that this crime "disproportionately restricts the right to freedom of expression of citizens." According to the Constitutional Court, Article 162 of the Penal Code created an unconstitutional inequality between officials and citizens, which was incompatible with international human rights commitments. The Court also held that public officials should be subject to special and wide scrutiny, which requires open and vigorous debate on matters of public importance.⁴⁰⁴

III. BRAZIL

A. Criminal Laws Restricting Freedom of Expression

Brazilian law criminalizes libel, slander and defamation ("*injuria*").

1. Calumny

Pursuant to Article 138 of the Brazilian Penal Code, slander consists of attributing a "criminal offense" to another person. It is punishable by six months to two years in prison and a fine.⁴⁰⁵ Notably, slander is also punishable if the statement is made against the deceased.

2. Defamation

Article 139 of the Penal Code defines defamation as the attribution to another person of a fact or action that affects that person's reputation, and is punishable by three months to one year in prison and a fine.⁴⁰⁶

3. Slander

According to Article 140, slander consists of "offending the dignity of another person," and is punishable by one to six months in prison.⁴⁰⁷ Penalties increase whenever the statement is made against the president, against the head of a foreign government, a public official

in the performance of his official duties, or a person who is disabled or over 60 years old, in accordance with Article 141.⁴⁰⁸

4. Defenses

As potential defenses to these crimes, judges in Brazil tend to analyze each case taking into account whether (i) the published information reflects the truth, or at least is supported by evidence that allowed the journalist to publish credible information; (ii) the dissemination of such information represents the public interest; and (iii) the journalist intentionally aimed to harm someone.

B. Enforcement of Criminal Defamation Laws

Various forms of libel and defamation remain criminalized in Brazil, although most of the numerous lawsuits that arise each year have been filed under civil (rather than criminal) statutes. For instance, bloggers frequently are forced to pay fines following defamation suits over their online reporting. These civil penalties may still serve to restrict freedom of speech in Brazil. Additionally, the media faces judicial censorship in Brazil.⁴⁰⁹ Even though the 1988 Brazilian Constitution guarantees freedom of the press and outlaws censorship, politicians, business people, and celebrities have used laws intended to guarantee the privacy of average citizens to silence the media. A 2012 report by the freedom of expression group *Article 19* noted that the threat of lawsuits and court orders leads many bloggers and online journalists, who lack the resources of journalists backed by traditional media companies, to practice self-censorship.⁴¹⁰

In June 2015, the Brazilian Supreme Court voted unanimously to strike down a 2003 law that had allowed the subjects of unauthorized biographies to seek to ban the publication of those works on the grounds that they violated their right to privacy as protected by Brazil's constitution. The case had been brought by major Brazilian publishers after a series of judgments that had favored the interests of celebrities.⁴¹¹

1. Operação Fator

On July 31, 2009, a judge in Brasília granted an injunction forbidding the newspaper *O Estado de S. Paulo* from publishing reports containing information about a federal police investigation, called "*Operação Fator*," of Fernando Sarney, son of the Senate's President, José Sarney. The injunction requested by Fernando Sarney was granted one day after it was requested to the court. The judge prohibited the newspaper from publishing any further information about the *Operação Fator* investigation. The judge stipulated that for each report that was subsequently published in defiance of the injunction, the newspaper would be charged a fine of R\$150,000 (approximately \$64,000).⁴¹² Even though Fernando Sarney withdrew his injunction request in December 2009, the injunction against the newspaper continues, according to a May 2013 report.⁴¹³

2. *Gutjhar v. Sharkey*

On September 29, 2009, a civil defamation suit was filed against a U.S. freelance journalist, Joe Sharkey, for comments on his blog about a 2006 plane crash in Brazil in which he was a passenger.

The plaintiff in this case is Rosane Gutjhar, a citizen of Brazil, who claims that Sharkey offended Brazil's honor in comments made on his blog. Gutjhar demands approximately US\$280,000 in damages. Sharkey has argued that the comments are not his and can be traced back to the "readers" comments published on the Brazilian news website.⁴¹⁴ In November 2011, a court in the state of Paraná ruled against Sharkey, ordering him to pay a fine in the amount of R\$50,000 (approximately US\$23,000) and to publicly withdraw the statements.⁴¹⁵

3. *Maiorana v. Pinto*

In November 2012, a judge rejected the appeal of journalist Lúcio Flávio Pinto and ordered him to pay approximately US\$205,000 in libel damages to businessman Romulo Maiorana Júnior and his family's company, Delta Publicidade. The charges derived from a story published by Pinto in *Jornal Pessoa* in 2005, in which he alleged that Maiorana's media group had pressured companies and politicians into giving them advertising.⁴¹⁶ A final decision is now pending before a Court of Appeals.⁴¹⁷

4. *Capez v. Amaral*

On September 19, 2013, the STJ dismissed a judicial action based on the constitutional principle of freedom of expression. In this case, Fernando Capez, a São Paulo state deputy and member of the Public Attorney's Office, sued the journalist José Carlos Amaral Kfour (best known as Juca Kfour) in order to prevent Mr. Kfour from publishing any future articles about Capez. According to Mr. Capez, his honor and image were consistently offended by Juca Kfour through slanted journalism, especially in articles posted on Mr. Kfour's blog.⁴¹⁸

5. *The Case of José Goes*

On October 27, 2013, a decision against journalist José Cristian Goes was confirmed by an Appeals Court in the State of Sergipe. The journalist had been convicted and sent to prison (a sentence that was later converted into community service) for injury against a state court judge. The journalist had published a fictional story on his blog, which included an unflattering character that the state court judge believed to be a depiction of himself, despite a lack of clear elements in the story directly linking the character to the judge. The decision concluded that the journalist abused freedom of speech and violated the judge's right to privacy.⁴¹⁹

6. *Da Costa v. Editora Abril*

On November 19, 2013, the Superior Tribunal of Justice (STJ), the highest court in Brazil analyzing non-constitutional matters, dismissed a judicial action in which Waldemar da Costa Neto, a former congressman, sued the publishing company Editora Abril. The suit was

brought because of an article published at *Revista Veja*, a Brazilian magazine covering political and social developments, which narrated the alleged involvement of Mr. Costa Neto in illegal transfers of money abroad based on the testimony of a broker. Editora Abril proved that it had enough evidence to support the article, and because Mr. Costa Neto was a politician, the court concluded that it was in the public interest for the article to be published.⁴²⁰

7. *Humberto Riella Sobrino v. Aguirre Talento*

In April 2014, a Court in Bahia sentenced Aguirre Talento, a journalist for the newspaper *A Tarde*, to a six-month jail term on defamation charges, which were suspended in favor of community service and a fine. The conviction arose from an article Talento wrote in 2010 that alluded to authorities' investigation into a businessman accused of noncompliance with environmental rules on a construction project. The businessman, Humberto Riella Sobrino, claimed that Talento had defamed him and damaged his honor by writing that the prosecutor had asked that he be placed in preventive detention. Sobrino denies the claims and is appealing the sentence.⁴²¹

8. *Sen. Roberto Requião v. Ricardo Boechat*

In May 2014, Ricardo Boechat, host of the news program *Jornal da Band* on the TV network Bandeirantes, was convicted by a São Paulo court of defaming a local senator and sentenced to six months and 16 days of jail time which was suspended in favor of community service. The case arose in 2011, when Boechat accused the senator of corruption and nepotism. The senator subsequently filed a suit against Boechat accusing him of defamation and damaging his reputation.⁴²²

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

There is no provision expressly prohibiting the application of Brazil's criminal defamation laws to Internet and Mobile communications. Therefore, based on the broad language of these provisions, they are likely applicable in the online context.

D. Status of Criminal Defamation Laws

In 2003, Law No. 10.741⁴²³ made two changes to the Brazilian Penal Code concerning the legislation on defamation. First, Article 140 of the law increased the penalty for defamation in cases where the injury concerns race, color, ethnicity, religion or origin. Second, Article 141 provided that penalties could be increased by up to a third if the subject of the defamation was elderly or disabled.

In May 2009, the Supreme Federal Tribunal, the highest court in Brazil analyzing constitutional matters, took a significant step in eliminating criminal defamation in Brazil by repealing the 1967 Press Law which imposed harsh penalties on journalists for criminal defamation.

Despite this advancement, press members are still subject to ordinary criminal charges (under the provisions of the Penal Code). The Penal Code has remained unchanged despite the repeal of the 1967 Press Law.

In addition, Bill No. 236 of 2012 (“Bill 236”) is currently under discussion in the Brazilian Congress. This bill, if approved, would significantly reform the Penal Code with respect to certain aspects of criminal defamation issues.⁴²⁴

The first and most crucial modification proposed under Bill 236 would be a change to Article 141 to stipulate that criticisms, reviews or opinions of artistic, literary, scientific and journalistic nature do not constitute defamation and injury, unless the opinion contains an unambiguous intention to defame.⁴²⁵ In practice, this modification would simply update the Brazilian Penal Code to reflect the current case law since, as a matter of course, the Superior Tribunal of Justice generally analyzes the intention of the defendant before reaching a decision.

In addition, in response to a conflict between the current penal law and the Organization of American States’ (OAS) rules, Bill 236 would revoke Article 331 of the Penal Code on criminal defamation.

However, other provisions in Bill 236 do not represent a step in the right direction. For example, the Bill would serve to drastically increase penalties for infractions, by proposing that: (i) the current penalty for defamation of three months to one year in prison would be increased to one to two years in prison; (ii) the current penalty for slander would be increased to one to two years in prison instead of the current six months to two years in prison; and (iii) the penalty for the crime of “injury” which is currently one to six months in prison, would be increased to six months to one year in prison.⁴²⁶

Furthermore, Article 140 of Bill 236 would create an “aggravating factor” that would double the penalty for defamation and slander when these crimes are conducted by journalism or any communication that facilitates the propagation of the crimes, including through the use of electronic or digital media.

III. CHILE

A. Criminal Laws Restricting Freedom of Expression

1. Libel

Article 416 of the Criminal Code defines libel as statements made “in dishonor, discredit or scorn of another person.”⁴²⁷ For the purposes of determining what constitutes libel, it is not relevant whether the expressions are true or false.

A. *Serious Libel*

According to Article 417 of the Criminal Code, libel is “serious” when any of the following acts occurs:

- A statement attributes to another person a crime or minor felony that does not give rise to “*ex officio* prosecution”—that is, the state may not begin the prosecution without a criminal complaint from the affected individual.
- A statement attributes to another person a punished or elapsed crime.
- A statement attributes to another person a lack of morality, the consequences of which may affect the victim’s reputation, credibility or interests.
- A statement is libelous to the public (that is, if it may be considered “outrageous” by public opinion), depending on the nature, occasion or circumstances of the statement.

Notably, judges may also hold that the libel is “serious” in light of the “situation, dignity and circumstances of the offended and the offender.” Article 418 of the Criminal Code provides that (i) if the libel was committed publicly and in writing, the penalty is imprisonment ranging from 61 days to three years and a fine of 11 to 20 Monthly Tax Units (“MTUs”), equivalent to US\$850 to US\$1,500; and (ii) if (b). Minor Libel was not committed publicly and in writing, the penalty is imprisonment ranging from 61 to 540 days and a fine of six to 10 MTUs, equivalent to US\$480 to US\$800.

B. *Minor Libel*

“Minor libel” consists of harm inflicted upon an individual’s honor that cannot be classified as any of the crimes established in Article 417 of the Criminal Code. If the libelous statement is made in writing and publicly, then according to Article 419 of the Criminal Code, the penalty will be imprisonment ranging from 61 to 540 days and a fine of six to 10 MTUs, equivalent to US\$480 to US\$800. However, if minor libel is committed neither in writing nor with publicity, it may be punishable with only one to four MTUs, which is equivalent to US\$80 to US\$320.

2. *Slander*

Article 412 of the Criminal Code defines slander as the “imputation of a specific but false crime, which can be currently prosecuted *ex-officio*.” The requirements are:

- There must be an accusation of a particular crime;

- The crime must be false; and
- The crime must be of the kind that can be prosecuted *ex officio*.

Accordingly, the relevant components of slander are: (i) making a statement against the morality or honor of an individual and (ii) imputing a false crime to such person. The applicable penalty will depend on the crime that is imputed to that person,⁴²⁸ and whether the slander is committed in writing and/or publicly.

If slander is committed in writing and publicly, then:

- If a felony is attributed, the penalty consists of imprisonment from 541 days to three years, and a fine of approximately 11 to 20 MTUs, equivalent to US\$850 to US\$1,540.
- If a misdemeanor is attributed, the penalty consists of imprisonment from 61 to 540 days, and a fine of approximately six to 10 MTUs, which is equivalent to US\$480 to US\$800.

If slander is *not* committed in writing and publicly:

- If a crime is attributed, the penalty consists of imprisonment ranging from 61 to 540 days and a fine of six to 15 MTUs, which is equivalent to approximately US\$480 to US\$1,150.
- If a simple felony is attributed, the penalty consists of imprisonment of 61 days and a fine of approximately six to 10 MTUs, which is equivalent to approximately US\$480 to US\$800.

The specific penalty, within the above mentioned ranges, will be decided by a judge based on the particular circumstances of the crime. To prosecute an individual for the crime of slander, the crime attributed by the offender must be within the applicable statute of limitations and the victim cannot already be serving a sentence for that particular crime.

3. Rules common to both slander and libel

The following rules are common to both slander and libel:

- Slander and libel may be committed both expressly and implicitly, through either material or immaterial means such as allegories, caricatures, symbols and

allusions, in accordance with Article 421 of the Criminal Code.

- Slander and libel may not be “frustrated” or “attempted” (that is, they must produce the injury to the plaintiff) and can only be committed by means of an action (and therefore may not, for example, be committed by accident).
- Slander and libel require an intention to damage the honor of the victim, so-called *animus injuriandi*.
- According to Article 428 of the Criminal Code, the injured party may pardon the offender, in which case no penalty will be applied by the court.

4. Special rules on libel and slander for journalists

Law No. 19.733, concerning the “Liberties of Opinion and Information, and Exercise of Journalism” (the “Law of Press”), establishes definitions and parameters for the profession of journalism. For instance, it guarantees the right to express an opinion without prior censorship⁴²⁹ and defines what is understood by the term “social communication media,”⁴³⁰ among others.

Notably, Article 29 of the Law of Press provides that “personal appreciations” and criticism regarding “politics, literacy, history, art, sciences and sports” shall not be considered libel, unless it is clear that the purpose of the statement was to defame.⁴³¹

5. Defenses

The most common and effective defenses argued by defendants in libel and slander accusations are the following: (i) that the person acted under his constitutional right of freedom of opinion, according to Article 19, No. 12 of the Constitution; (ii) the absence of *animus injuriandi* in the expressions; and (iii) that the expressions constitute an opinion or a critique, made in the course of journalist work, so that the expressions do not fall within the scope of criminally defamatory crimes.

Furthermore, in case of libel the defendant can plead – as a defense and to avoid liability – that the statements made were true, provided that the statements were made against a public officer and that the statements concern the public official’s position (an “exception of truth” or *Exceptio Veritas* defense).⁴³²

According to Article 30 of the Law of Press, if libel is committed through social media the “exception of truth” defense can be applied if the libelous statement is made against a public official concerning the performance of his or her duties or if the motive of such expression is to protect an actual public interest. Article 30 provides a list of acts that are considered to be

in the “public interest.”⁴³³

B. Enforcement of Criminal Defamation Laws

Criminal defamation laws are generally enforced by the courts, but their final application depends on the particular facts of each case. In this regard, below are the most notable recent cases.⁴³⁴

1. *Dimter v. Bonnefoy*

In 2010, Edwin Dimter sued Pascal Bonnefoy, a journalist of the newspaper *La Nación*, under Article 29 of the Law of Press for publishing an article showing that Edwin Dimter was responsible for the murder of singer Victor Jara.⁴³⁵ As reported by CPJ: “On January 18, [2010], a Santiago tribunal dismissed the criminal charges against the journalist based on four witnesses’ testimonies.”⁴³⁶

The Court further held that the journalist’s conduct at issue consisted of only interviewing, collecting and compiling information, and that the journalist did not actually say that Edwin Dimter committed the crime.⁴³⁷ The Court explained that, for the purposes of libel, there must be an intention of dishonoring, discrediting or producing some harm to another person, the so-called *animus injuriandi*. The trial court’s decision to dismiss the case was upheld by the Supreme Court in May 2010.⁴³⁸

2. *Ramón Bravo v. Sergio Pizarro and Luis Villagrán*

Journalist Sergio Pizarro wrote in 2010 a story criticizing the Coquimbo municipal councilmen for the impact that a monument allegedly had on the welfare of the municipality’s citizens. A member of the municipality, Ramón Bravo, sued both the journalist and the director of the newspaper that published the story, Luis Villagrán, accusing them of having committed libel and slander.⁴³⁹ The case reached the Court of Appeals of La Serena, which held that to commit libel and slander, the offender must have the *animus injuriandi* – the consciousness or knowledge of what is going to be told with the purpose of dishonoring the offended person. Because the article only intended to criticize, and not to harm, the Court of Appeals ruled in favor of the journalist and the director of the newspaper.⁴⁴⁰

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

The above-mentioned laws are likely to apply to Internet and mobile communications. With respect to both libel and slander, the definition of the offense consists merely of expressing something about someone else against his or her honor. The Chilean Criminal Code does not establish a specific means of committing these crimes; therefore, they can be committed via Internet or mobile communications.

D. Status of Criminal Defamation Laws

In the last 10 years, no changes have been made to defamation laws in Chile. However, according to the Gazette of the Senate of the Republic of Chile N° 6861-07, on March 23, 2010, Senator Carlos Bianchi submitted a motion to modify the Criminal Code in order to establish that libel and slander must be committed publicly and in writing if they are published by means of images, videos, Internet chats, virtual communities, social media and, in general, any other suitable means.

V. COLOMBIA

A. Criminal Laws Restricting Freedom of Expression

Articles 220-222 of Act 599 of the Colombian Criminal Code criminalize defamation under three categories: (i) insult or dishonorable accusation; (ii) calumny or the false imputation of a specific criminal conduct; and (iii) indirect insult or calumny.

1. Insult

Insult consists of making “dishonorable accusations against another person” and it is punishable by 16 to 54 months of imprisonment and fines that can range from 13.33 to 1,500 monthly minimum wages (equivalent to approximately US\$4,000 to US\$465,000).⁴⁴¹

According to the Colombian Supreme Court of Justice and the Constitutional Court, the following five requirements must be met in order for a person to be convicted of insult:⁴⁴²

- a. *Animus Injuriandi*. The person making the dishonorable accusation must be aware, subjectively speaking, that he or she is dishonoring another person.
- b. *The accusation is made against a determined or determinable person*. The offender determined the person against whom the accusation is made.
- c. *The person making the accusation has knowledge of its dishonorable character*. The offender knows that the statement or accusation can be reasonably considered to be dishonorable by the target.
- d. *The accusation in fact harms or injures the honor of the target*. The accusation made by the offender harms the honor of the person at whom the accusation is aimed.

e. *The awareness of the capacity to harm.* The offender must be aware that the accusation has the capacity or potential to harm or injure the honor of the target.

2. Calumny

Calumny consists of “falsely imput[ing] a specific criminal behavior” to another person, and is punishable by 16 to 72 months of imprisonment and a fine that can range from 13.33 to 1,500 monthly minimum wages (equivalent to approximately US\$4,000 to US\$465,000).⁴⁴³ A calumny conviction must meet the following requirements established by the Supreme Court of Justice and the case law of the Constitutional Court:⁴⁴⁴

a. *The recipient has to be a determined or determinable person.* The stated attribution of the commission of a specific criminal conduct has to be to a determined or determinable person.

b. *Falsehood of the statement.* The offender has to falsely state that a determined or determinable person committed a specific criminal behavior.

c. *Awareness of the falsehood of the statement.* The offender must know the statement is false.

d. *Volitive and cognitive requirements.* The offender has to willingly and consciously make a false statement.

3. Indirect Insult or Calumny

Indirect calumny and/or insult is defined as “any dishonorable accusation or false imputation of a criminal conduct perpetrated by impersonal means, such as publications, reproductions, repetition of insults and/or calumny made by others.” The penalties for indirect insult or calumny are the same as for direct insult and direct calumny, respectively.⁴⁴⁵

4. Defenses

The truthfulness of the statement at issue may be used as a defense against a charge of insult, calumny, indirect insult, or indirect calumny.⁴⁴⁶ Additionally, if the insult or calumny is reciprocal (that is, each party was responsible for stating an insult or calumny against the other), then the offenders are deemed to be exempt from criminal responsibility.⁴⁴⁷

The Criminal Code also establishes that there is no criminal sanction if the author of the criminal conduct retracts or withdraws the defamatory statement before a decision is reached in a court of first instance.⁴⁴⁸

Both insult and calumny are crimes that can only be investigated if the affected person requests the prosecutor's office to initiate an investigation on the matter. In other words, the state cannot begin an *ex officio* investigation for such crimes, without a criminal complaint from the affected individual.

B. Enforcement of Criminal Defamation Laws

In 2013, the Colombian Foundation for the Freedom of Press (FLIP –Fundación para la Libertad de Prensa) published a handbook for journalists containing guidelines on how to defend themselves against judicial actions for defamation.⁴⁴⁹ According to the handbook, a survey carried out in 2011 among 603 journalists showed that, in the consulted journalists' opinion, defamation suits were the second factor (after self-censure) that most affected the environment of free exercise of journalism in Colombia. The following is a selection of some of the most recent and notable cases.

1. The Case of *Luís Gonzalez*

Mr. Gonzalez was convicted in 2011 by a court of first instance for defamation committed against the former mayor of Fusagasuga on the basis of an article he published in the local journal *Cundinamarca Democrática* where he harshly criticized the mayor's management and questioned her next candidacy for the Colombian Senate. He was convicted of slander and libel, sentenced to 20 months in prison and handed down a fine of 20 minimum wages, equivalent to approximately US\$5,200.⁴⁵⁰

The Court of Appeals partially reversed the trial court's decision on the libel claim, but confirmed the slander conviction, lowering the penalty to 18 months and 18 days in prison and a fine of 17.77 minimum wages, equivalent approximately to US\$5,700.⁴⁵¹ The Court of Appeals held that Mr. Gonzalez did not commit libel because the expressions he used were "opinions" made in connection with matters of general public interest in the exercise of journalism, and his expressions were made only to warn citizens about the facts that happened during the officer's public life. However, the Appeals Court considered that other expressions used by Mr. Gonzalez exceeded mere criticism and opinion, and thus constituted offenses to the honor and good name of Fusagasuga.

The Supreme Court ultimately revoked the ruling of the Appeals Court with respect to the crime of slander and absolved Mr. Gonzalez of the charges against him. The Supreme Court ruled that the statements made by Mr. Gonzalez regarding the character and personality of the victim, in spite of being disrespectful and potentially unethical insults,⁴⁵² were not capable of damaging the honor of the victim, as they reflected the perception of the journalist and were not meant to prove the other such affirmations. Therefore, these expressions could not be considered crimes.⁴⁵³

2. The Case of *Claudia Lopez*

Columnist Claudia Lopez was absolved of a defamation conviction that was issued on the

basis of an article she published in 2006 in the journal *El Tiempo*. In that article, and in the context of the recent appointment of the former President Ernesto Samper, Lopez referred to Samper as someone capable of dealing with the mafia in order to gain access to the presidency, corrupting institutions, and maybe even interceding to eliminate people having knowledge of his affairs, among others.⁴⁵⁴ Notably, the court held that the article was an opinion of the journalist in connection with a highly topical subject in those days, allowed within the framework of the freedom of expression in connection with matters of general public interest.⁴⁵⁵ The court also held that the journalist did not show "*animus injuriandi*."⁴⁵⁶

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Slander and libel crimes may be committed by any means and through any medium, including when using the Internet and/or any mobile communications. The fact that these crimes are committed through the use of Internet and/or mobile communications does not modify the scope of the application of the law, and there is no specific application of the law to the commission of these crimes through the use of Internet and/or mobile communications. However, the Colombian Criminal Code contains aggravating penalties (which increase the penalties from 1/6 up to 1/2 times) when libel or slander are committed by using any social media communication, or in public meetings.⁴⁵⁷

D. Status of Criminal Defamation Laws

The public prosecutor office together with the Justice Department and the Constitutional Court has been working on a reform to the Colombian Code of Criminal Procedure since 2012 to streamline the accusatory penal system. Even though the amendment's focus is not on decriminalizing the offenses of insult and calumny, one of the goals of the reform is to make it harder for people to bring such offenses and try to resolve the issues in an amicable way.⁴⁵⁸

VI. ECUADOR

A. Criminal Laws Restricting Freedom of Expression

Article 489 of the Criminal Code defines defamation as: (i) slanderous when someone makes a false accusation of an offense; and (ii) non-slanderous when someone makes a statement to discredit, dishonor or disparage another person, or any action performed with the same purpose.⁴⁵⁹ According the Article 490 of the Criminal Code,⁴⁶⁰ non-slanderous defamation is classified as follows:

1. Major Non-Slanderous Defamation:

- Allegations of a vice or lack of morality with consequences that can significantly impair the reputation, credit, or interests of the victim;

- Allegations that, by their nature or circumstance, may be considered outrageous by the public;
- Allegations that rationally deserve a classification of serious or major, considering the state, dignity and circumstances of the offense and the offender; and
- Allegations of slapping, kicking, or other physical attacks.

2. Minor Non-Slanderous Defamation:

- Minor non-slanderous defamation consists of attributing to another person facts, nicknames, or physical and moral defects that do not compromise the honor of the injured.

B. Enforcement of Criminal Defamation Laws

Criminal defamation laws are actively enforced in Ecuador. As of 2011, approximately 18 cases in which journalists and media have faced lawsuits have been reported. The following are the most notorious and recent cases.

1. Correa v. El Universo

President Correa filed a claim against the newspaper *El Universo* for publishing an article entitled “*Say No To Lies*” by Emilio Palacio. The article stated that President Correa committed certain crimes during the September 30, 2010 political events and confrontations with the national police. The columnist and the editorial page editor called President Correa a “dictator” and accused him of giving troops permission to fire on a hospital full of people during a police uprising.⁴⁶¹ The trial court convicted the owners of the newspaper, sentenced them to three years in prison, and ordered them to pay US\$40 million in damages. The case drew national and international media attention. In February 2012, it was reported that President Correa “forgave” the penalties imposed against the newspaper and the case was closed.⁴⁶²

2. Walter Vite Benítez

On April 30, 2011, Walter Vite Benítez, a journalist for a Provincial Ecuadorian radio, was sentenced to one-year imprisonment and fined US\$500 on criminal defamation charges stemming from a critical comment about the local mayor made three years prior. According to Mr. Benítez, he criticized the performance of Esmeraldas’ mayor Ernesto Estupiñán, but he never mentioned the official by name and instead only referred to “a mayor” In his comment. Benítez, the journalist, believes that he is being persecuted for his critical reporting on city government.⁴⁶³

3. Delgado v. Jaime Mantilla Anderson

The director of a Quito-based newspaper, Jaime Mantilla Anderson, was sentenced to three

months in prison on December 21, 2011 for a series of articles on Pedro Delgado, president of the board of directors of Ecuador's central bank and President Correa's second cousin. The articles, published in September and October 2009, claimed that Mr. Delgado wielded behind-the-scenes influence in the government. In his complaint, Delgado claimed that Mantilla had refused to reveal the articles' author or sources.⁴⁶⁴ We understand that Mr. Delgado later withdrew his complaint and therefore Mr. Anderson was not required to serve his prison sentence.

4. *Correa v. Calderón and Zurita*

On February 6, 2012, a regional civil court ordered journalists Juan Carlos Calderón and Christian Zurita to pay US\$1 million in damages each to President Correa, as well as US\$100,000 for the plaintiff's legal fees, on charges of defaming the president in their book *Big Brother*. In this book, they alleged that the president's older brother, Fabricio Correa, had obtained US\$600 million in state contracts, largely for road construction. After details of the corruption emerged, Correa canceled the contracts, saying he had been unaware of the arrangements. He then filed a US\$10 million defamation lawsuit against the journalists and devoted three *cadena*s (presidential broadcast addresses that pre-empt programming on all stations nationwide) to discrediting the book and its authors.⁴⁶⁵ Weeks after the ruling, Correa announced that he would pardon the journalists along with the defendants in the *El Universo* case.⁴⁶⁶

5. *María Helena Villarreal v. Yaco Martínez*

On March 8, 2013, Yaco Martínez, director of the daily *La Nación* in the province of Carchi was convicted of defaming a former governor with an article published in his newspaper and sentenced to prison. The charges arose from a report in *La Nación* in which Martínez claimed that then-Gov. Villarreal would have her former chief of staff run the state's affairs during her vacation even though he no longer held formal office. Martínez was sentenced to one month in prison and ordered to pay US\$30,000 in damages plus Villarreal's legal fees. The journalist said he would appeal and argued that the judge should be removed from the case because, according to Martínez, his wife is a cousin of the plaintiff.⁴⁶⁷

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Slander and libel crimes may be committed by any means through any medium, including the Internet and/or any mobile communications.

D. Status of Criminal Defamation Laws

There have been no recent developments in Ecuador's criminal defamation laws.

VII. GUYANA

A. Criminal Laws Restricting Freedom of Expression

In Guyana, provisions on damages for slander and libel were consolidated into the 1959 Defamation Act.⁴⁶⁸

Defamatory libel is a criminal offense under the Criminal Law (Offences Act) of Guyana (Chapter 8:01 of the Laws of Guyana).⁴⁶⁹ A defamatory libel is a matter published—without any legal justification or excuse—in order to insult the person to whom it is addressed, or aimed to injure the reputation of any person by exposing that person to “hatred, contempt or ridicule.”⁴⁷⁰

The defamatory statement may be expressed either in words or by any other means, and directly or implicitly.⁴⁷¹ Publishing a defamatory libel is exhibiting it in public, or causing it to be read or seen, or causing it to be shown or delivered to, and with a view to its being read or seen by another person.⁴⁷²

Punishment for publishing a defamatory libel includes fines and imprisonment terms from one to three years depending on the particular circumstance:

- Publishing of defamatory libel: up to one year in prison and a fine.⁴⁷³
- Publishing of defamatory libel known to be false: up to two years in prison and a fine.⁴⁷⁴
- Publishing of defamatory libel seeking to extort money: up to three years in prison.⁴⁷⁵

Additionally, the Guyanese Criminal Law Offences Act also contains other relevant provisions related to conducts that are considered to be libel:

- Publishing seditious libel: up to two years prison and a fine.⁴⁷⁶
- Publishing blasphemous libel: up to one year in prison.⁴⁷⁷
- Publishing obscene libel: up to two years in prison.⁴⁷⁸

Guyana's criminal law provides that there is no chargeable offense when the statement is made in one of the following circumstances:⁴⁷⁹

- On invitation or challenge of the person defamed;
- In a proceeding in a court of justice, or in response to official inquiries;
- In papers to the National Assembly;
- In a fair report of, and comment on, parliamentary proceedings;
- On matters of public interest believed to be true;
- In a fair comment on conduct of public affairs or on literary publication or public performances;
- On a matter in good faith, to obtain redress for a wrong;
- In answer to an inquiry by an interested person;
- In information to a person interested in the subject matter of that information.

The Criminal Law Offences Act provides that "owners of a newspaper, journal, magazine or other writing or print, periodically published is *prima facie* criminally responsible for defamatory matter inserted and published therein," although this is a so-called rebuttable presumption, meaning it can be disproved.⁴⁸⁰

However, the owner of a newspaper or publication may not be considered negligent by generally authorizing the making of the defamatory statement unless the owner—when giving that general authority—understood that it was authorizing the defamatory statement, or continued delegating that authority after learning that a defamatory statement had been made.⁴⁸¹

Regarding the sale of periodicals containing defamatory matters, Guyana's criminal law establishes that: (i) no person shall be considered to have committed a chargeable offense by selling an edition or part of a periodical, unless that person knew it contained (or usually contained) defamatory matter;⁴⁸² (ii) no person shall be considered to have committed a

chargeable offense by selling any book, pamphlet, print, or writing or other thing not forming part of a periodical, despite containing a defamatory statement, if—at the time of the sale—the person did not know that the defamatory matter was contained therein;⁴⁸³ and (iii) the sale by a servant of any book, pamphlet, print, writing, or other thing whether periodical or not, shall not make the owner of the publication or employer criminally responsible in respect of a defamatory statement contained therein, unless it is proved that the owner or employer authorized that sale with knowledge that the book, pamphlet, print, writing, or other thing contained a defamatory statement.⁴⁸⁴

The fact that the publication of the defamatory statement was for the “public benefit” at the time when it was published constitutes a defense against criminal liability. The truth of the statement may also be used as a defense.⁴⁸⁵

With respect to libel, criminal law establishes that no person shall be convicted of blasphemous libel when expressing (or attempting to express) in good faith and in decent language any opinion whatsoever on any religious subject.⁴⁸⁶

B. Enforcement of Criminal Defamation Laws

According to the International Press Institute, there have been no recent prosecutions of journalists under Guyana’s criminal defamation laws.⁴⁸⁷ However, there have been a number of civil suits filed by government officials against journalists.⁴⁸⁸

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

The definition of defamatory libel in Guyana’s criminal law includes the expression either “in words legibly marked upon any substance, or by any object signifying the matter otherwise than by words, and may be expressed either directly or by insinuation or irony.”⁴⁸⁹ This definition is broad enough to include in its scope the commission of defamatory libel through the Internet or mobile communications. However, there is no relevant case law regarding the special treatment given to defamatory libel when committed through these means.

D. Status of Criminal Defamation Laws

Guyana is in the process of revising several defamation laws. In particular, on May 4, 2013, the Guyana Times reported that “[t]he Legal Affairs Minister, Anil Nandlall, said government is in the process of reviewing several archaic laws that need to be revised, one of which is the controversial criminal defamation legislation which the International Press Institute (IPI) has been lobbying Caribbean countries to scrap.”⁴⁹⁰

VIII. PARAGUAY

A. Criminal Laws Restricting Freedom of Expression

Paraguay has criminal defamation laws and journalists have been threatened by prosecutions under criminal charges for slander, calumny, libel and defamation.⁴⁹¹ These offenses are governed by Articles 150 to 156 of the Paraguayan Criminal Code.⁴⁹²

1. Calumny

According to Article 150 of the Criminal Code, calumny consists of attributing to another person, falsely and knowing that it is not true, a fact that is capable of damaging that person's "honor or reputation." Calumny is punishable by a fine. If the offense is committed before a crowd of people, or through dissemination in a publication or repeatedly over a prolonged period of time, the punishment may be increased to two years of imprisonment, or a fine.⁴⁹³

2. Defamation

Under Article 151 of the Criminal Code, defamation consists of attributing to another person a fact capable of damaging that person's honor.⁴⁹⁴ Defamation is punishable by a fine equivalent to 180 "penalty days," which constitutes an amount that varies depending on the daily average wealth of the person convicted.⁴⁹⁵ However, if the statement is made before a crowd of people, through dissemination in a publication, or if it is repeatedly made over a prolonged period of time, the punishment may be increased to up to one year of imprisonment or a fine.⁴⁹⁶

A defamatory statement will not be punished if (i) it is addressed confidentially to one related person or when, in its form and substance, it does not exceed the limits of an acceptable criticism; and (ii) if, bearing in mind the author's interests and duty to investigate according to the circumstances, it is a proportional means for the defense of public or private interests.⁴⁹⁷

3. Slander

Under Article 152 of the Criminal Code, slander consists of attributing to someone else a fact capable of damaging or otherwise having a negative effect upon that person's honor. Although the crime of slander is quite similar to that of defamation, it is somewhat broader, as it even includes "negative opinions" of another person that are capable of damaging that person's honor.⁴⁹⁸

Slander is punishable by a fine.⁴⁹⁹ As with defamation, if this act is done in front of a third party or if it is repeatedly done over a prolonged time, the fine may be increased to 180 "penalty-days."

4. Defenses

In Paraguay, slander shall not be punished if (i) it is addressed confidentially to one related

person or when, in its form and substance, it does not exceed the limits of an acceptable criticism; and (ii) if, bearing in mind the author's interests and duty to investigate according to the circumstances, it is a proportional means for the defense of public or private interests.⁵⁰⁰

B. Enforcement of Criminal Defamation Laws

Criminal defamation laws in Paraguay have been recently enforced to threaten journalists who criticize politicians, judges and public figures. Since 2012, there have been at least five cases of criminal prosecutions against journalists brought in Paraguay.⁵⁰¹

1. *Salinas v. Hadid, Cuevas, Park and Caballero*

In 2011, lawyer Evelio Salinas initiated a criminal prosecution against Mr. Ismael Hadid, Mr. Silvio Cuevas, Ms. Yolanda Park and Mr. Andrés Caballero for defamation, calumny and slander. The prosecution was initiated as a result of a TV show aired on May 8, 2010 in which Mr. Cuevas interviewed Mrs. María Tomasa Lugo Benítez, who had filed a claim accusing Mr. Salinas of falsifying birth certificates to facilitate adoption procedures. In the interview, Mrs. Lugo reiterated her claim that Salinas falsified his adoptive sons' birth certificates.⁵⁰²

In August 2011, the first instance judge acquitted the journalists, but held Mrs. María Tomasa Lugo Benítez guilty of defamation and punished her with a fine equivalent to 180 penalty-days or US\$2,248.33. In his decision, the judge acknowledged that the journalists had the right to inform the public about a judicial claim, if substantiated by official documents and provided that the defendant is presumed innocent.⁵⁰³

2. *Adaro Monzón v. Ferreira*

Journalist César Ferreira, of a local radio station called "Yuty," was accused of defaming Benjamín Adaro Monzón, a member of the incumbent *Colorado* political party. Ferreira was accused of reading—live on the radio—an article published in *ABC Color* newspaper on February 17, 2010, which stated that Adaro Monzón transported meat coming from illegal cattle rustling activities.⁵⁰⁴ Ferreira was initially acquitted in 2010 allegedly because there was no evidence against him. However, in August 2011, the first instance decision was reversed, and a new prosecution was initiated by Adaro Monzon against César Ferreira. The matter is still pending before the criminal courts.⁵⁰⁵

Other relevant cases include:

- In September 2012, Nilza Ferreira, a reporter with the daily *La Nación*, was threatened with a lawsuit by President Federico Franco's brother, Senator Julio César Franco, when she questioned him about his maid's presence on a superior court payroll.⁵⁰⁶

- In October 2012, President Franco threatened legal action against newspaper *ABC Color* following a series of articles that linked his wife, lower house member Emilia Alfaro, to irregularities in the awarding of transportation contracts.⁵⁰⁷
- In October 2011, an appeals court upheld a sentence against *ABC Color* publisher Aldo Zuccolillo, ordering him to pay roughly US\$43,000 for damages resulting from a 2006 article that allegedly damaged the honor and reputation of a judge, Carmelo Castiglioni.⁵⁰⁸

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

In Paraguay, criminal defamation laws apply to the Internet and/or mobile communications. Articles 150, 151 and 152 of the Criminal Code define calumny, defamation and slander generally, without limiting them to written, radio or TV means of communication. Therefore, in theory, criminal defamation laws in Paraguay are also applicable if the criminal acts are committed through the Internet or mobile communications.⁵⁰⁹

D. Status of Criminal Defamation Laws

Other than the decision by the Plurinational Constitutional Court to declare the crime of “contempt” (styled “*desacato*” in Paraguay) unconstitutional,⁵¹⁰ there have been no other recent developments in criminal defamation laws.

IX. PERU

A. Criminal Laws Restricting Freedom of Expression

In Peru, criminal defamation laws are in effect and are generally enforced. Journalists are regularly threatened by prosecutions under criminal charges for insult, calumny, libel and defamation.⁵¹¹ Notably, the crime of “contempt” (also known as “*desacato*”) was repealed in 2003 by Law N° 27975.⁵¹²

1. Insult

Under Article 130 of Peru’s Criminal Code, insult consists of offending or insulting another person with words, gestures or acts and is punishable by community service ranging from 10 to 40 days, or with a monetary fine.⁵¹³

2. Calumny

In accordance with Article 131 of Peru’s Criminal Code, calumny consists of falsely attributing a crime to someone else, and is punishable by a monetary fine.⁵¹⁴

3. Defamation

Defamation is defined as the action of publicly attributing and disseminating a fact, quality

or conduct to another person that may damage his or her honor or reputation.⁵¹⁵ Defamation is punishable by a maximum of two years imprisonment and a fine of 30 to 120 penalty-days.⁵¹⁶ If defamation is “calumnious,” meaning that it falsely attributes a felony to someone else, the penalty is between one to two years of imprisonment and 90 to 120 penalty-days. If defamation is committed using a publicly available source or media (*i.e.*, through a book, the press or other social media), the penalty ranges between one to three years of imprisonment and 120 to 365 penalty-days.

4. Defenses

Most journalists defend defamation claims by alleging that they have exercised their constitutional right to freedom of expression.⁵¹⁷ In a binding decision on October 13, 2006, the Supreme Court analyzed the need for judges hearing criminal defamation cases to balance a person’s honor (Article 2, section 7 of the Constitution), protected under the criminal defamation laws, and the constitutional right to freedom of expression (Article 2, Section 4 of the Constitution).⁵¹⁸ The Court held that journalists who (i) comply with a minimum standard of care; (ii) refer to public figures or government officers (*i.e.*, have a public interest component); and (iii) have credibility should be protected by the right of freedom of expression and not be prosecuted under the defamation laws.

Journalists can also make use of the so-called *Exeptio Veritatis* defense, enshrined in Article 134 of the Penal Code, under which liability for defamation may be avoided if the defendant demonstrates that its investigation and allegations are true. The truth defense is only applicable in cases where the facts considered as defamatory are related to public interest matters. Article 134 establishes the cases in which the public interest component is fulfilled, including: (i) if the offended person is a public officer and the facts refer to the exercise of his or her functions; (ii) if there is an ongoing criminal proceeding against the offended person and the facts refer to the criminal actions being investigated; (iii) when it is evident that the author of the defamation action has acted in the public interest or in self-defense; or (iv) when the plaintiff requests that the facts are fully investigated to determine if the defamatory allegations are true or false.

Finally, the statute of limitations has been used effectively as a defense against criminal prosecutions.⁵¹⁹ The general rule is that the statute of limitations is 1.5 times the time of the maximum imprisonment time of the crime. Because these crimes have a maximum imprisonment time of three years, the statute of limitations is a maximum of 4.5 years.

B. Enforcement of Criminal Defamation Laws

Individuals, specifically journalists, are generally threatened by criminal prosecutions for insult, calumny and defamation, and are often subject to sentences that result in suspended or effective prison convictions and fines.⁵²⁰

1. *Victor Feria Puellas v. Alejandro Carrascal Carrasco*

On January 12, 2010, journalist Alejandro Carrascal Carrasco was sentenced to one year in

prison on criminal defamation charges filed by the former director of a public college over a series of articles that Carrasco wrote in 2005 alleging corruption in that local public college. Mr. Puelles, the former director, alleged that his reputation was damaged. The Peruvian Supreme Court overturned the ruling in 2010.⁵²¹

2. Paul Segundo Garay Ramírez v. Agustín López Cruz

Prosecutor Agustín López Cruz filed a defamation claim against a journalist, Mr. Garay. The prosecutor alleged that the journalist had insinuated that the prosecutor was engaging in corruption, that the prosecutor had sexually harassed young litigants, and that the journalist had called the prosecutor an “erotic dwarf.” Mr. Garay denied the voice on the tape was his own, claiming that he did not work at the station at the purported time of the broadcast. Furthermore, the journalist stated that he believed the charges were in reprisal for his reporting on corruption. On April 19, 2011, Mr. Garay was sentenced to three years imprisonment and a fine of US\$7,150. On July 27, 2011, a Court of Appeals upheld the sentence but reduced the prison term to 18 months. In September 2011, chief prosecutor Pablo Sánchez Velarde presented a report to the Supreme Court that found deficiencies in the evidence presented in the case, including a lack of clear proof that the voice on the recording belonged to Mr. Garay. On October 29, 2011, Mr. Garay was released after the Supreme Court overturned the defamation conviction against him.⁵²²

3. Vásquez Romero v. Hans Francisco Andrade Chávez

On July 6, 2011, Hans Francisco Andrade Chávez, a reporter for the local affiliate of national television network América, was sentenced to two years in prison and fined US\$1,430 on criminal defamation charges arising out of a report concerning a local government official. Mr. Chávez had interviewed a member of a local political party who claimed that Chepén deputy public services director Juan José Vásquez Romero had threatened her life. Mr. Romero then filed a complaint against Mr. Chávez accusing him of defamation. A Peruvian court found that the assertions made in the report were untrue, although the written decision cited no supporting evidence. Mr. Chávez believes he was singled out due to his previous critical reporting on local government.⁵²³ We understand, however, that Mr. Chávez has not yet seen jail time.

4. Former Minister of the Interior Vidal v. Tafur and Chávez

In 2012, a court in Lima sentenced Juan Carlos Tafur, editor of the daily *Diario 16*, and Roberto More Chávez, a reporter for the paper, each to a two-year suspended prison sentence and a fine of US\$22,200 in damages. The case arose from a 2012 article by Mr. More in *Diario 16* that linked a prominent retired general to a family with alleged connections to drug trafficking. Mr. More reported in that article that the paper had accessed a police document that linked Gen. Vidal Herrera, the country’s former Minister of the Interior, to the Sánchez Paredes family, several members of which have been indicted for money laundering. Mr. Vidal then filed a complaint alleging that the report was wrong and had damaged his honor and reputation.⁵²⁴

5. Mayor Mesía Camus v. Meléndez Fachín

In November 2012, radio journalist Teobaldo Meléndez Fachín was found guilty of criminal

defamation and sentenced to a three-year suspended sentence and a US\$11,047 fine for reporting that a local mayor had misused a 5.5 million soles government loan. In the report, Mr. Meléndez said that Juan Daniel Mesía Camus, the mayor of Yurimaguas, had used the loan for public works projects that benefited his own political allies. The mayor said the reports were wrong and filed a complaint in July 2012 alleging that the journalist had damaged his reputation. On March 19, 2012, a Peruvian appeals court overturned the decision against Mr. Fachín finding “substantial errors” in the earlier criminal defamation conviction and gaps in the plaintiff’s evidence.⁵²⁵

6. *Álvarez Aguilar v. Peñaranda*

Alcides Peñaranda, editor of the Peruvian daily and magazine *Integración*, was sentenced on May 21, 2013 in the city of Huaraz to a two-year suspended prison sentence and fined US\$3,662 in damages on charges of criminally defaming Cesar Álvarez Aguilar, governor of the northern Ancash region. The charges arose from a report published in *Integración* in February that year that discussed alleged corruption in Mr. Álvarez’s government and quoted a report in the Lima-based magazine *Hildebrandt en sus Trece* that claimed that the governor was being protected from prosecution by a contact at the local attorney general’s office. The criminal defamation case against Mr. Peñaranda was upheld.⁵²⁶

7. *Gov. César Álvarez Aguilar v. Espinoza*

Peruvian journalist Humberto Espinoza Maguiña was convicted twice in September 2013 on charges of defaming the governor of the northeastern Peruvian state of Ancash. He received a two-year suspended prison sentence and was fined US\$2,000 in damages. First, Mr. Espinoza was found guilty of defaming Governor César Álvarez Aguilar through the publishing of an article that accused the Governor of participating in local corruption. The journalist was then convicted of defaming the Governor in an October 2012 article in *Prensa Regional*, which accused Mr. Álvarez and the Ancash government of closing a local radio station for political motives.⁵²⁷

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Criminal defamation laws in Peru expressly apply to Internet and/or mobile communications. Specifically, Article 132 of the Penal Code establishes that defamation committed by means of a book, the press or “other social media” is an aggravating factor of the criminal act of defamation.

D. Status of Criminal Defamation Laws

In 2011, the permanent commission of Congress approved a bill to amend Article 132 of the Penal Code to remove the imprisonment penalty of the insult and defamation laws and replace it with fines and community service.⁵²⁸ Efforts to decriminalize defamation and insult laws have not seen any further material developments since then.

X. SURINAME

A. Criminal Laws Restricting Freedom of Expression

Suriname's Criminal Code contains several provisions that can be classified as either criminal defamation or contempt offenses.⁵²⁹ According to the International Press Institute, Suriname's penalties for these offenses are the harshest of any such laws in the Caribbean.⁵³⁰

1. Defamation

With respect to criminal defamation, Section 320 defines defamation (*smaad*) as intentionally harming another's honor and reputation by publicizing a particular fact.⁵³¹ Defamation is punishable by a fine and up to six months of imprisonment, with a maximum prison term of one year if the defamation was made in writing or through images.⁵³²

The Criminal Code also creates separate crimes with harsher punishments for particular types of defamation. If the published statement falsely attributes a crime to another person (also referred to as "slandering insinuation")⁵³³ or when the individual whose honor is harmed is a government official ("false accusations")⁵³⁴ the offense is punishable by up to three years of imprisonment. A libelous statement claimed as a truth where no proof is presented to support the statement by the speaker is also punishable by up to three years of imprisonment.⁵³⁵

Defamation of deceased persons,⁵³⁶ and even intentional insults not rising to the level of libel or defamation (*belediging die niet het karakter van smaad of smaadschrift draagt*) are both punishable by fines or up to three months in prison.⁵³⁷

The Criminal Code provides that neither slander nor libel will be found where the perpetrator acted in the public interest or out of necessity.⁵³⁸ Establishing this defense is the only circumstance in which the truth of the fact asserted will be investigated.⁵³⁹

2. Contempt

The most serious offense in this area is the public expression of enmity, hatred, or contempt (*vijandschap, haat of minachting*) toward the Surinamese government, which carries a prison term of up to seven years.⁵⁴⁰ Intentionally insulting (*belediging*) either the head of state, a public authority, or even a foreign country's head of state or representative in Suriname, are punishable by fines or imprisonment of up to five, two, and four years, respectively.⁵⁴¹ Much like the criminal defamation provisions, the Criminal Code also attaches criminal penalties to more minor acts of contempt. Simply distributing or displaying a writing or image insulting the head of state, even if written or originally published by another, is punishable with a fine or a year in prison, provided that the perpetrator knows or has serious reason to suspect the document's seditious contents.⁵⁴² Insulting the Surinamese flag exposes an offender to a six-month prison term.⁵⁴³

B. Enforcement of Criminal Defamation Laws

The International Press Institute reported in February 2013 that, of the sixteen countries considered geographically or culturally part of the Caribbean, Suriname is one of only six countries to have had journalists criminally prosecuted for defamation within the last 15 years.⁵⁴⁴ Suriname's prosecutions during this period were aimed at the same newspaper publisher, but these prosecutions do not appear to have resulted in convictions.

1. *De West v. Findlay*

In 2005, prosecutors initiated a criminal defamation case against George Findlay, publisher of *De West*. *De West*, along with *De Ware Tijd*, is one of the two privately-owned Dutch-language daily newspapers in Suriname.

The matter began when *De West* was accused of publishing an article defaming members of the Suriname Currency Board, the body responsible for maintaining the country's foreign exchange rates. Following the publication of the article, a Surinamese court ordered a correction to be published in *De West* and in *De Ware Tijd*.⁵⁴⁵ The requirement that a correction be published in a newspaper other than the original source was considered by the Association of Caribbean Media Workers to have "contravened conventional judicial parameters with respect to court-ordered retractions of erroneous publications" and to have "exceed[ed] typical international remedies in matters of this kind."⁵⁴⁶

Although Findlay published a correction at *De West*, *De Ware Tijd* refused to publish the correction out of solidarity with *De West*. In response, prosecutors opened a criminal defamation case against Findlay, threatening him with imprisonment and a fine of SR\$ 1,800 (equivalent to US\$600) for each day that the correction was not published in *De Ware Tijd*.⁵⁴⁷ For unknown reasons, the case was dropped by prosecutors in 2006.⁵⁴⁸

Subsequently, in 2007, *De West* published an article accusing Samuel Mehairdjan, a director at the Suriname Energy Corporation (*NV Energie Bedrijven Suriname*) of various acts of misconduct, including that Mehairdjan was personally responsible for causing power outages.⁵⁴⁹ At Mehairdjan's behest, prosecutors brought a second criminal defamation case against Findlay under Article 321 of the Criminal Code (libel claimed as truth where no proof is presented). For unknown reasons, since April 2013, the case has officially been listed as "postponed."⁵⁵⁰

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

The criminal defamation and seditious libel laws of Suriname appear readily applicable to Internet or mobile communications. Specifically, the crimes of defamation and public expression of enmity, hatred, or contempt emphasize the publication of the offending

material.⁵⁵¹ Similarly, the crimes of intentional insult generally refer to the substance of the offending statement and its public display or spread.⁵⁵² The specific crime relating to insult in writing or images also does not require that the writing or image be in physical form, and prohibits the distribution or public display of these materials generally.⁵⁵³

D. Status of Criminal Defamation Laws

In April 2013, the International Press Institute (“IPI”) and the Association of Caribbean Media Workers conducted a mission to Suriname to encourage government officials to repeal criminal defamation laws.⁵⁵⁴ IPI reported that Surinamese government officials were generally supportive of the revision of the country’s defamation laws, so long as the changes were accompanied by journalist training and a reliable avenue for citizens to voice complaints against the media. Dr. Jennifer Simons, speaker of the Surinamese National Assembly noted that “people need the power to defend their dignity” against the media’s tendency to sensationalize and “deliberately print lies,” but agreed that imprisonment as a possible punishment was not the means to pursue.⁵⁵⁵ IPI reported it will work with the Surinamese government on a legislative package that would decriminalize libel and insult while implementing self-regulatory mechanisms to oversee media standards.⁵⁵⁶ There has been no further update reported on this work.

Similar missions as part of IPI’s Campaign to Repeal Criminal Defamation in the Caribbean have directly contributed to the repeal of criminal libel laws in Grenada, the partial decriminalization of defamation in Trinidad and Tobago, and a penal code reform bill pending in the Dominican Republic that would eliminate prison sentences for defamation.⁵⁵⁷

XI. URUGUAY

A. Criminal Laws Restricting Freedom of Expression

Under the Uruguayan Criminal Code, defamation, slander and contempt are considered criminal offenses.⁵⁵⁸ However, as explained in more detail below, in June 2009 Congress amended the Criminal Code to decriminalize defamation and slander in the context of information and opinions made on matters of public interest, or related to public officers or public figures.⁵⁵⁹ The scope of the crime of contempt was also limited; now it is no longer a chargeable offense to merely disagree with an order from a public officer.⁵⁶⁰

1. Defamation

Defamation consists of attributing to any person, in their presence or before others, a determined fact, which if true, would entail a criminal or disciplinary proceeding against such person or would expose the person to public hate or contempt.⁵⁶¹ Defamation is punishable by four months to three years of imprisonment, or a fine ranging between eighty and eight hundred Tax Units (“*Unidades Reajustables*”) (equivalent to about US\$2,400 to US\$24,000).

2. Slander

Slander consists of any offense other than defamation, made by a person against the “honor,

honesty or decorum" of another person that is expressed either in words, writings or facts.⁵⁶² Slander is punishable by imprisonment ranging between three and eighteen months or a fine ranging between sixty and four hundred *Unidades Reajustables* (equivalent to about US\$1,800 to US\$12,000).

3. Contempt

Contempt ("*desacato*") consists of detrimentally affecting the image of a public officer or institution, through either of the following means: (i) insults made in the presence of the public officer or in the place it performs its functions; or (ii) openly refusing to comply with the public officers' legitimate orders.⁵⁶³ However, amendments to the Criminal Code in 2009 limited the scope of this "*desacato*" crime such that no person may be subject to criminal charges for simply disagreeing with the mandates of an authority.⁵⁶⁴

4. Aggravating Penalties

Aggravating penalties (which increase the penalties from 1/6 up to 1/3 times) are applicable when the above mentioned crimes are committed through the use of public documents, publicly disseminated or publicly available writings, drawings or paintings.⁵⁶⁵

5. Defenses

The following conduct will not by itself create criminal liability, except when it can be proved that the offender acted with "*actual malice*" (deliberate action) to offend the target or violate his or her privacy by:

- a. making or divulging statements of any kind on matters of public interest referring either to (i) public officers or to other public figures (considered as such because of their profession), or (ii) to any other person that is voluntarily involved in public interest matters;
- b. reproducing any kind of statement on matters of public interest when the author of such statements is identified; and
- c. making or divulging any kind of humorous or artistic statement concerning the type of subject matter referred to in either (a) or (b), above.

Those accused of defamation and slander will have the right to prove the truthfulness of the facts and the credibility of the attributions made about the person in question, except when the case involves the privacy of that person or when there was no public interest in divulging these facts. If the truthfulness or credibility of the statement is proved, the author will not be found criminally liable, except if he or she acted with actual malice.

The statute of limitations for the prosecution of a defamation crime and a slander crime is one year and three months, respectively.⁵⁶⁶

As explained below, the Supreme Court has relied on the concept of actual malice in determining liability for these crimes, which was incorporated into Uruguayan law in June 2009.⁵⁶⁷ However, it is still unclear how courts have (and will) interpret the meaning of the phrase “actual malice.”

B. Enforcement of Criminal Defamation Laws

Before the amendment of the Uruguayan Criminal Code was passed on June 26, 2009, there were several prosecutions against journalists based on allegations of defamation. Law 18,515 narrowed the scope of defamation, slander and contempt by decriminalizing defamation and slander for (a) messages involving information and opinions made on matters of public interest or related to public officers or public figures (except, as explained above, when actual malice is proven or the intention was to offend the privacy of such persons), and (b) by limiting the crime of contempt (“*desacato*”) such that no one can be subject to criminal charges for merely disagreeing with authorities.⁵⁶⁸ Nonetheless, lawsuits for these offenses continue to be brought against journalists.

The following is a selection of relevant cases resolved both before and after the amendment to the Criminal Code in 2009.

1. Mayor of Guichón

In 2013 a radio broadcaster – whose name was kept confidential – was convicted of slandering the mayor of Guichón.⁵⁶⁹ The broadcaster was sentenced to nine months in prison, although the execution of this penalty was suspended and he was later released. The court considered the statements made by the broadcaster to exceed mere criticism, finding that the broadcaster aimed to discredit a public authority. The court also held that aggravating circumstances existed because the offense was committed through the media.

2. The Case of Javier Duarte

In July 2009, for the first time after the amendment to defamation and slander in the Criminal Code, the Court of Appeals reversed a first instance ruling of a journalist’s conviction for defamation.⁵⁷⁰ The Court of Appeals referred to the notion of “actual malice.” The case concerned a publication made by the journalist Ricardo Morales, reporting the arrest of two policemen that supposedly had tried to introduce cocaine into the country. The Court of Appeals held that—according to the new legislation on freedom of speech—the potential harm to a public officer cannot by itself restrict the freedom of press, because such freedom could not exist if journalists were prevented from publishing news that affected the honor of public officers.

3. *The Case of Alvaro Alfonso*

In May 2009, the journalist Alvaro Alfonso was convicted of defamation against a politician and senator because of particular statements made in his book.⁵⁷¹ The court held that by stating that the politician had collaborated with military forces during the dictatorship, his honor was offended and he was exposed to public hatred and contempt. The journalist was not sentenced to prison, but the conviction was added to his criminal record.

4. *Carlos Dogliani*

In September 2006, the Supreme Court of Uruguay convicted the journalist Carlos Dogliani of defamation against the mayor of Paysandu and sentenced him to five months imprisonment (the penalty was subsequently suspended).⁵⁷² In 2004 the journalist had allegedly published various articles questioning the mayor's conduct, including a doubtful exoneration from taxes of a debt related to a real estate investment. The Supreme Court appears to have disregarded the truthfulness of the facts attributed to the mayor and considered that protection of the mayor's honor should prevail over freedom of expression. In making such a ruling, the Supreme Court ignored a 1997 decision holding that public officers are expected to tolerate criticism, and that freedom of expression is meant to prevail over honor provided that the information published is in the public interest. In February 2007, Dogliani filed a suit against the Republic of Uruguay government before the Inter-American Commission on Human Rights based on the violation of his freedom of expression. In 2009, the Republic of Uruguay and the journalist reached an agreement to settle the case.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

In Uruguay, there is no particular legislation concerning crimes committed through the use of Internet and/or mobile communications and therefore, the fact that such crimes are committed through these means does not modify the scope of the application of the law. Aggravating penalties might be applicable for crimes committed through the use of Internet and/or mobile communications given that the crimes are committed through publicly available means.⁵⁷³

D. Status of Criminal Defamation Laws

On June 10, 2009, the Uruguayan Congress approved Law 18,515 on "*Medios de Comunicación y Modificación de Varias Disposiciones del Código Penal*" in order to decriminalize defamation and slander in the context of information and opinions made on matters of public interest or related to public officers or public figures (except when actual malice is proven or the intention was to offend the privacy of such persons).⁵⁷⁴

These amendments also limited the crime of "*desacato*" to prevent individuals from becoming subject to criminal charges solely for disagreeing with the authorities.

On the same date, Congress incorporated a provision into Law 16.099 on Communications and Information. This provision established that the criteria set forth in the rulings and opinions of the Inter-American Commission on Human Rights shall be taken into account for the purposes of interpreting and applying the civil, procedural and criminal rules concerning expression, opinion and divulging facts related to communications and information—provided, however, that in so doing, the protection level set forth by national legislation or jurisprudence would not be decreased.⁵⁷⁵

XII. VENEZUELA

A. Criminal Laws Restricting Freedom of Expression

Venezuela's Criminal Code contains several provisions that may be classified as either criminal defamation or contempt offenses. These provisions are not only in force, but are also actively applied in the journalistic and political contexts.

1. Contempt

Article 147 of the Criminal Code provides that:

“Whoever offends in word or in writing, or otherwise disrespects the President of the Republic or whoever is in possession of the Presidency, will be punished with imprisonment from six to thirty months if the offense was serious, and with half [of that penalty] if the offense was slight. The penalty shall be increased by one-third if the offense was committed publicly.”⁵⁷⁶

In accordance with Article 148 of the Criminal Code, when the actions described in Article 147 are carried out against any of the following officials, the penalty shall be reduced in half: Executive Vice-President of the Republic, a Justice of the Supreme Tribunal of Justice, a Minister of the Cabinet, a State Governor, a Deputy of the National Assembly, the Metropolitan Mayor, a rector of the National Electoral Council, the Ombudsperson, the Solicitor General, the Attorney General or the General Comptroller or a member of the Military High Command. In the case of a Municipal Mayor, the penalty shall be reduced by one-third.⁵⁷⁷

2. Disparagement

Article 149 of the Criminal Code also provides that “whoever publicly denigrates the National Assembly, the Supreme Tribunal of Justice, the Minister's Cabinet as well as any of the Legislative Council of the States or any of the Superior Courts, shall be punished with imprisonment from fifteen days to ten months.”⁵⁷⁸ Such penalty will be reduced in half when the crime is committed against the Municipal Council and the penalty will be increased by half if the offense is committed by a person duly exercising his or her official duties.

3. Defamation

Article 444 provides that whoever communicates with “several people, together or separately”

and somehow offends the “honor, reputation or dignity of any person,” may be imprisoned from six months to one year and fined 50 to 100 Tax Units, equivalent to US\$1,000 to US\$2,000.⁵⁷⁹ If the act is committed in presence of the victim, even if in private, or by writing that is addressed to the victim, or in a public place, the penalty may be increased by a third; if the statement is made publicly, the penalty may be increased by half.

Also, Article 442 of the Penal Code provides that any individual that communicates with several people, together or separately, accusing an individual of a certain act, which could expose [that person] to public contempt or hatred, or which offends his honor or reputation, shall be punished with imprisonment from one to three years and a fine from 100 to 1,000 Tax Units, equivalent to approximately \$2,000 to \$40,000. If the offense is committed through a public document, writing or drawings released or available to the public, or through other advertising media documents, the penalty shall be two years to four years in prison and a fine from 200 to 2,000 tax units, equivalent to approximately US\$2,000 to US\$40,000.⁵⁸⁰

4. Defamation of Public Officials

Article 222 of the Criminal Code establishes that:

“Whoever, by word or deed, offends somehow the honor, reputation or dignity of a member of the National Assembly or a public official, shall be punished as follows if the act took place in his/her presence and because of his/her functions: (1) if the offense was directed against a member of the police force, with imprisonment from one to three months; (2) if the offense was directed against a member of the National Assembly or a public official, with imprisonment from one month to one year, depending on the category of such persons.”⁵⁸¹

5. Calumnies and False Imputation

The Criminal Code also punishes calumnies or the false imputation of a criminal conduct under its Article 240. Specifically, it provides that “[w]hoever, knowing that an individual is innocent, denounces him/her before any judicial authority or before a public official who has the obligation to process the complaint, imputing an offense, or simulating the appearance or physical evidence of an offense, shall be penalized with prison from six to 30 months.”⁵⁸² Article 240 further provides that the offender shall be imprisoned for a period of 18 months to five years when: (1) the crime that the innocent person is accused of is penalized by law with more than 30 months in prison (*i.e.* intentional manslaughter); and (2) when the accusation has effectively caused the imprisonment of the accused (innocent) person.

6. Causing Panic in the Community

Article 297-A of the Criminal Code provides that “any person who disseminates through print, radio, television, phone, emails or written pamphlets any false information causing panic in the community or keep[ing] it in distress shall be punished with imprisonment from two to five years.” If the events described in the preceding paragraph are committed by a public official,

or by a person using anonymity or under the name of another person, the penalty shall be increased by one third.

7. Defenses

Article 443 provides that the truthfulness of the statement cannot be used as a defense except when (i) the victim is a public officer, provided that the offensive statement is related to the officer's functions; (ii) a trial is pending against the victim stemming from the same set of facts that was attributed to the victim by the alleged offender; or (iii) when plaintiff requests that the court make a final determination on the truth or falsity of the allegedly defamatory facts.

B. Enforcement of Criminal Defamation Laws

The Criminal Chamber of Venezuela's Supreme Tribunal of Justice has held that there is a subjective element of intent contained within the crime of defamation called so-called *animus difamandi*. This is the intention to disparage or discredit the victim, which is aggravated when the statement or message is disseminated through public documents, graphics, writings or other public means.⁵⁸³ The following are the most notable criminal defamation cases in Venezuela.

1. Case of Guillermo Zuloaga

On March 21, 2010, Guillermo Zuloaga, the then President of the TV news station *Globovisión*, gave a statement before the General Assembly of the Inter-American Society of Press concerning the political situation in Venezuela.⁵⁸⁴ The National Assembly considered this statement to be false and the Public Prosecutor's Office requested an arrest warrant on charges of "false information" and "offenses against the Head of Government," as provided by Articles 297-A and 147 of the Criminal Code.

On March 25, 2010, the Attorney General ordered the arrest of Zuloaga, and he was detained for questioning. On March 26, 2010, the Attorney General stated that Mr. Zuloaga would be tried in liberty.⁵⁸⁵ Zuloaga is now living in exile.⁵⁸⁶ We have not been able to verify the current status of the criminal proceedings against Zuloaga.

2. Leocenis García and 6to Poder

In 2011, Leocenis García, the owner of the weekly *6to Poder* was charged with inciting hatred, insulting a public official, and publicly denigrating women in connection with a satirical article on government officials published in the weekly. Mr. García was imprisoned for several weeks but later released.⁵⁸⁷

3. Case of Francisco Pérez

On February 4, 2013, the journalist Francisco "Pancho" Pérez was accused by the Government

Secretary of the State of Carabobo, Miguel Flores, of “aggravated defamation and libel.” This accusation followed the publication by the journalist of an opinion in his weekly column in the newspaper *El Carabobeño*, where he associated the public official with a fire generated in the landfill of Guásima on January 1, 2013.⁵⁸⁸ On June 18, 2013, it was reported that Perez Flores agreed before the trial Court that he would withdraw his statements.⁵⁸⁹ Ultimately, no penalties were imposed.⁵⁹⁰

4. Case of Leonardo León

After the presidential elections held on April 14, 2013, journalist Leonardo León was accused by the governor of the State of Mérida, Ramón Ramírez, of defamation. This accusation followed León’s report on his radio show that motorized forces supported by the government committed violent acts in Mérida,⁵⁹¹ which damaged some facilities of the University of Merida. According to a press release, the governor began the criminal proceeding on the grounds that the journalist exposed him to contempt and public hatred, offending his honor and reputation while on duty. On January 14, 2014, the First Trial Court of the Merida District closed the case on the basis of Ramírez’s abandonment of the proceedings.⁵⁹² No penalty was ultimately imposed on León.

C. Application of Criminal Defamation Laws to Internet and Mobile Communications

Criminal defamation laws in Venezuela appear to be applicable to statements made through the Internet or mobile communications, as the legislation does not make a distinction between the means by which the defamatory statement is made, except to increase the punishment imposed on the offender. For instance, Article 444(2) of the Penal Code provides that if defamation is committed through public documents, writings, graphics or other public means the punishment is more severe.⁵⁹³

D. Status of Criminal Defamation Laws

To the best of our knowledge, there have been no recent attempts or discussions to amend or decriminalize criminal defamation laws in Venezuela.

ENDNOTES



- 1 Inter-Am. C.H.R., Annual Report 1994, Ch. V: Report on the Compatibility of “Desacato” Laws
 With the American Convention on Human Rights (Feb. 17, 1995) (“Desacato Report”).
- 2 *Dalban v. Romania*, 31 Eur. Ct. H.R. 39 (2001).
- 3 American Convention on Human Rights, Nov. 22, 1969, art. 13(2)(a) (emphasis added).
- 4 See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, In
 ter-Am. Ct. H.R., Advisory Opinion OC-5/85, para. 46 (decided Nov. 13, 1985). The European Conven
 tion employs a similar test: any restriction on expression must be proportionate to a legitimate aim
 of the State. See, e.g., *Roemen et al. v. Luxembourg*, -- Eur. Ct. H.R. --, paras. 48, 51 (decided Feb.
 25, 2003) (finding that interfering with free expression is not justified other than in response to “a
 pressing social need, . . . proportionate to the legitimate aim pursued” where the State provides “rel
 evant and sufficient” reasons for the interference); *Öztürk v. Turkey*, -- Eur. Ct. H.R. --, paras. 64(iii),
 71 (decided Sept. 28, 1999) (holding that criminal proceedings violated Article 10, as it was not estab
 lished that “there was a ‘pressing social need’ capable of justifying a finding that the interference in
 question was ‘proportionate to the legitimate aim pursued’”).
- 5 Inter-Am. Comm’n H. R., Report of the Special Rapporteur for Freedom of Expression, ch. V, sec. C,
 para. 22, OEA/Ser.L/V/II.88 (2002); see also *Theophanus v. Herald & Weekly Times Ltd.*, 182 C.L.R.
 104, 130-31 (1994) (describing “chilling effect” caused by civil and criminal defamation laws).
- 6 See Jairo E. Lanao, Symposium on the Role of a Free Press and Freedom of Expression in the Devel
 opment and Consolidation of Democracies in Latin America: Legal Challenges to Freedom of the Press
 in the Americas, 56 U. Miami L. Rev. 347, 361 (2002) (criminal defamation prosecutions are common in
 Chile, Brazil, Panama and Paraguay); CPJ, Attacks on the Press in 2002 (2003), at 90 (almost half of
 Panamanian journalists face criminal defamation charges).
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 court ruling seen as a serious setback, November 19, 2013, available at [http://cpj.org/blog/2013/11/
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- 8 *Id.*
- 9 <http://www.corteidh.or.cr/cf/Jurisprudencia2/index.cfm?lang=en>.
- 10 http://www.corteidh.or.cr/docs/casos/articulos/seriec_107_ing.pdf; see also brief of the Committee
 to Project Journalists et al. as amici curiae in support of the Mauricio Herrera Ulloa and Fernan Vargas
 Rohmoser filed on February 18, 2004.
- 11 http://corteidh.or.cr/docs/casos/articulos/seriec_111_ing.pdf.
- 12 http://www.oas.org/en/iachr/expression/jurisprudence/si_decisions_court.asp.
- 13 http://cpj.org/news/2001/Chile_matus.pdf.
- 14 <http://www.cidh.oas.org/annualrep/2005eng/Chile12142eng.htm>.
- 15 Canada Criminal Code (R.S.C., 1985, c. C-46), § 296. Canada last prosecuted a blasphemous libel in *R.*
v. Rahard [1936] 3 D.L.R. 230 (Court of Sessions of the Peace, Quebec, 1935), in which the court found
 Rev. Victor Rahard of the Anglican Church guilty of blasphemous libel for his aspersions upon the Ro
 man Catholic Church because [he] “calculated and intended to insult the feelings and the deepest reli
 gious convictions of the great majority of the persons amongst whom we live.”
- 16 Canada Criminal Code, § 297.
- 17 *Id.* § 297(2).
- 18 *Id.* §§ 300-01.
- 19 *Dowson v. Canada*, [1981] F.C.J. No. 426, at para 15 (citing Halsbury “Laws of England,” 4th ed., vol. 28,
 para. 97, p. 107).
- 20 Canada Criminal Code, §§ 305-08.
- 21 *Id.* § 315.
- 22 *Id.* § 309.
- 23 *Id.* § 310.
- 24 *Id.* §§ 312-14.
- 25 *Id.*
- 26 See *Freedom House*, Freedom of the Press 2013, Canada, available at [http://www.freedomhouse.org/
 report/freedom-press/2013/canada](http://www.freedomhouse.org/report/freedom-press/2013/canada).
- 27 See Dean Prichard, *Criminal libel case between Peter Nygard, CBC proceeds*, TORONTO SUN, May 3,
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 criminal-libel-case-between-peter-nygard-cbc-proceeds](http://www.torontosun.com/2013/05/03/criminal-libel-case-between-peter-nygard-cbc-proceeds).
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 tic-for-canadians-expert/](http://globalnews.ca/news/674540/online-defamation-cases-often-unrealistic-for-canadians-expert/).
- 32 Law Reform Commission of Canada, *Defamatory Libel, Working Paper 35 (1984)*, available at [http://
 www.lareau-law.ca/LRCWP35.pdf](http://www.lareau-law.ca/LRCWP35.pdf).
- 33 *R. v. Prior*, [2008] N.J. No. 134 (Newfoundland Supreme Court).

- 34 *R. v. Lucas*, [1998] 1 S.C.R. 439, para 68.
- 35 *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640 and *Quan v. Cusson* 2009 SCC 62, [2009] 3 S.C.R. 712. These decisions were further reinforced in *Crookes v. Newton*, 2011 SCC 47, [2011] 3 SCR 269, which reiterated the application of the defenses of fair comment and responsible communication on matters of public interest.
- 36 These states are: Baja California, Baja California Sur, Guanajuato, Hidalgo, Nayarit, Nuevo León, Tabasco, Yucatán and Zacatecas.
- 37 Criminal Code for the State of Baja California, art. 186; Criminal Code for the State of Yucatán, art. 295.
- 38 Criminal Code for the State of Baja California Sur, art. 338.
- 39 Criminal Code for the State of Guanajuato, art. 188.
- 40 Criminal Code for the State of Hidalgo, art. 191; Criminal Code for the State of Zacatecas, art. 272.
- 41 Criminal Code for the State of Nayarit, art. 295.
- 42 Criminal Code for the State of Nuevo León, art. 345; Criminal Code for the State of Tabasco, art. 166.
- 43 See Elvia Cruz, *Un periodista de Tlaxcala va a juicio por llamar a un oficial "mediocre"*, CNN MEXICO, available at <http://mexico.cnn.com/nacional/2013/04/11/un-periodista-de-tlaxcala-va-a-juicio-por-llamar-a-un-oficial-mediocre>.
- 44 See *Cuatro policías violentan el derecho a la libertad de expresión del periodista Simón Tiburcio Chávez*, Article 19 (Nov. 3, 2009), available at <http://www.libertad-expresion.org.mx/noticias/cuatro-policias-violentan-el-derecho-a-la-libertad-de-expresion-del-periodista-simon-tiburcio-chavez/>.
- 45 Mexican Federal Official Gazette April 13, 2007. This reform also repealed the criminal causes of action for libel and slander from the Federal Criminal Code.
- 46 Federal Civil Code, arts. 1916, 1916a.
- 47 This figure includes the Federal District (Mexico City).
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- 50 *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964).
- 51 Tex. Finance Code § 122. 251.
- 52 Per *Williamson v. State*, 295 S.E. 2d 305 (Ga. 1982), element requiring that the communication "tend to provoke a breach of the peace" was unconstitutionally vague and overbroad.
- 53 Constitutional only if applied within the bounds of *Sullivan v. Ware*, 314 F. Supp. 335 (W.D. La. 1970).
- 54 Not enforced per *Boydston v. State*, 249 So. 2d 411 (Miss. 1971).
- 55 Unconstitutional per *State v. Helfrich*, 922 P.2d 1159 (Mont. 1996).
- 56 Unconstitutional per 1998 settlement with Nevada Attorney General.
- 57 Unconstitutional as to matters of public concern, *State v. Powell*, 839 P.2d 139 (N.M. Ct. App. 1992).
- 58 Unconstitutional per *Fitts v. Kolb*, 779 F. Supp. 1502, 1513 (S.C. 1991).
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- 60 See, e.g., Bob Anderson, *Prosecutor Won't Seek Defamation Charges*, *The Advocate* (Baton Rouge) Jan. 24, 2013, available at <http://theadvocate.com/csp/mediapool/sites/Advocate/assets/templates/FullStoryPrint.csp?cid=4993870&preview=y>.
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- 62 See supra note 60.
- 63 *State v. Carson*, Case No. 90,690, 2004 Kan. App. Unpub. LEXIS 1040 (Aug. 20, 2004).
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- 69 *Id.*
- 70 See, e.g., Emily Gurnon, *St. Paul man admits he posted ex-girlfriend's nude photos online*, *St. Paul Pioneer Press*, Aug. 27, 2013, available at http://www.twincities.com/crime/ci_23967376/st-paul-man-admits-he-posted-ex-girlfriends; Nicholas Riccardi, *Criminal charge filed in libel case*, *Los Angeles Times*, Dec. 4, 2008, at A10, available at <http://articles.latimes.com/2008/dec/04/nation/na-craig-slist-libel4>.
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- 72 2012 Colo. ALS 113 § 1.
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- 75 Belize Libel and Defamation Act, Chapter 169, § 12(1).
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 84 Id. § 225(1).
 85 Id.
 86 Id. § 213.
 87 Id. § 215(4).
 88 Id. § 225(2). Absolute privilege is a defense derived from British common law in which certain state
 ments, even if defamatory, may be protected under very limited circumstances, including statements
 made by judges, lawyers, witnesses and juries during judicial proceedings. Qualified privilege is a de
 fense that allows journalists to publish fair and accurate reports which are in the public interest, such as
 those described in Section 9 of the Libel and Defamation Act.
 89 Id. § 215(5).
 90 Id. § 216.
 91 Id. § 217.
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 S.A. (1988).
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 97 Id. art. 147.
 98 Id. art. 148.
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