

Hiding From The People

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of public officials**

What can be done about it

WORLD PRESS FREEDOM COMMITTEE

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The World Press Freedom Committee, established in 1976, includes 44 journalistic organizations on 6 continents and is dedicated to news free of government interference.

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How Insult Laws Restrict Liberties

An outmoded legacy of kings

The press is fully free in only about one third of the world's countries. Even some nations long rated as democracies cloak censorship in the garb of law. A prime example is stubborn retention in many countries of old, so-called "insult" laws. Like intruding weeds, the offshoots of these laws threaten the development of independent news media in new democracies, and diminish freedom elsewhere.

The notion of insult laws springs from the ancient concept of the divine right of kings -- that the monarch can do no wrong -- expressed in classic form in the French press law of 1881. That law made "insult to the president of the republic" a crime.

Subsequently, such laws fell into disuse by France and other democracies. Nevertheless, many remain on the books and serve as bad examples for those elsewhere seeking to stifle news reports, or any criticism:

- In Africa's Ivory Coast, three journalists were sentenced to two-year prison terms for "insulting" the president in articles suggesting that his presence had brought bad luck to the national soccer team. In

Cameroon, editor Pius Njawe was arrested for editorially criticizing a reported presidential plan to stack a new Senate with president-friendly appointees.

- The Czech Republic, supposedly a model of democracy in Central Europe, clings to portions of an insult law inherited from the old kingdom of Bohemia. An amended version omits the president, but continues to cover other officials.

- In Peru, a retired general was charged with insulting the armed forces in an interview with the magazine Caretas in which he analyzed military leaders' actions in a border conflict. In Venezuela, an author served five months in prison because his book, which reported on corruption in the judiciary and was titled "How Much Does a Judge Cost?" offended officials.

- In Almaty, Kazakstan, the chief public prosecutor there told a delegation of the foreign press attending a UNESCO conference on press freedom in 1992 that the conviction and imprisonment of a prominent Kazak historian and journalist for insulting President Nursultan Nazarbayev was perfectly legitimate because "You have similar laws in France and Germany, so why not here?" He ignored protestations that those laws were no longer applied. Among other terrible insults the prosecutor alleged the writer had made against the president was to call him

“a goat” -- apparently a particularly humiliating characterization in Kazakstan.

Prescribing criminal penalties for reporting or commentary that officials find unsettling conflicts with the Universal Declaration of Human Rights.

Which choice for freedom?

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” -- Universal Declaration of Human Rights

“One who, with threats or insults, offends the President of the Republic or one who is exercising the executive function, shall be punished with six months to two years in prison and a fine.” -- Insult law (Ecuador)

In country after country, insult laws (and criminal defamation laws with the same purpose) also do not stop at just “offensive” language. More often -- much more often -- they are used to stifle the kind of

reporting and commentary about claimed official misconduct or corruption that it is precisely the responsibility of the press to disclose.

Why should ordinary citizens care whether journalists are free to publish even unflattering views? Because, as is often stated, "A free press means a free people."

Without the freedom to consider all matters, including the conduct of its leaders and key officials, a society cannot be a true democracy.

What are insult laws?

Insult laws are one of the leading pretexts for restricting free speech, free information, free commentary and opinion -- the basic elements that make up freedom of the press.

Along with equally chilling criminal defamation laws they give special protection from so-called insult, offense, outrage, contempt or disrespect to the chief of state and other officials -- high and low -- public institutions or bodies like the parliament, the police or the armed forces, symbols of the state like the flag or the coat of arms, and the state or nation themselves. They also facilitate efforts to stifle journalists reporting allegations of more serious, official misconduct.

“Insult” laws make it a crime to offend the “honor and dignity” of public officials, state offices, and national institutions. There are no objective standards, and leaders themselves, often notoriously thin-skinned,

What leaders couldn’t tolerate

- In Uruguay, editors of La Republica were charged with “insulting” a foreign head of state by alleging mismanagement in construction of a power plant.
- In Ukraine, the newspaper Ridna Zemlya was banned for having “mortally offended” a regional leader in articles accusing him of currency speculation.
- In Cuba, a reporter was sentenced to prison for “insulting and contemptuous behavior.” His offense: reporting a clash between police and Cuban youth during a harvest celebration.
- In Zambia, the editor of The Post was charged with criminal libel for quoting an ex-minister as saying in court that the president was a “twit.”

determine in the first instance whether they feel “insulted” or offended. “Criminal defamation” laws establish criminal sanctions for slander (oral defamation) and libel (written defamation). Both types of laws are often defended as necessary to prevent

“abuses” of freedom of expression. But, in fact, the real abuses occur as government officials use such laws to punish their critics or cover up wrongdoing. The penalty for saying the wrong thing is prison, a fine or both.

Some differences exist. Defamation laws generally are aimed at false assertions of fact. They are designed to ensure that an individual’s reputation is not unjustly harmed. Insult laws, designed to protect “honor and dignity” rather than reputation, are used to punish truth as well as falsehood, opinions as well as factual assertions, satire, invective, and even bad manners.

Everyone -- even presidents and prime ministers -- has a legitimate right to protect his or her reputation if it is unjustly attacked. But no special laws are needed for that purpose. Customary non-criminal laws against libel and slander are available to public officials just as they are to private persons.

Also, experience shows, if some vestige of an insult or criminal defamation law survives on the books, local prosecutors will eventually use it.

A broadly representative study by the World Press Freedom Committee (WPFC) of more than 90 countries and territories -- about half the membership of the United Nations -- shows that such laws exist in every major region and are widely used as a legal basis for suspending or banning news media, jailing journal-

ists and fining the press. The study, available from the WPFC, is titled “Insult Laws -- an Insult to Press Freedom.”

Laws limit public debate

Insult laws and their implementation persist despite celebrated statements by prestigious world courts -- the European Court of Human Rights, the Inter American Court of Human Rights and others -- that public

Public figures need to be afforded less, not more, protection

figures need to be afforded less, not more, protection from defamation than ordinary citizens, if there is to be the free and vigorous debate that is needed in a democracy.

In the words of the Inter-American Court in the case of Argentine journalist Horacio Verbitsky that eventually led to the revocation of that country’s *desacato* or insult law, “The use of *desacato* laws to protect the honor of public functionaries acting in their official capacities” gives them protection “that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the government subject to controls.”

Such laws, the Court said, serve to silence “society as a whole.”

While the Verbitsky case had a happy outcome, with the revocation of Argentina’s law of *desacato*, the study undertaken for the WPFC shows that at least 18 other Latin American and Caribbean states maintain similar *desacato* laws on their books.

These *desacato* laws are based on a Spanish model, even though Spain partially revoked its ancient law in 1995.

The misleadingly named French Press Freedom Law of 1881 serves as a model not only throughout the former French colonies of Africa, but also across the former Soviet world, where new laws protecting the “honor and dignity” of presidents and other officials have become the norm.

In Europe, the French law has not been used since Charles de Gaulle was president. There also are unused insult laws on the books in Austria, Germany, Netherlands, Portugal, Italy and elsewhere. In Scandinavia, Denmark still theoretically protects its sovereign from insult. Norway has a similar law. Sweden did away with the offense in 1976 and other forms of insult law even earlier than that. Greece and Turkey are special cases, where insult laws are regularly used.

A major problem is the negative example that the democracies in Western Europe project to countries in

transition, where such insult laws are regularly used against the press.

What kind of reports or comment result in prosecution

Personal references deemed insulting:
xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx (49)

Allegation of official or other misconduct:
xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx xxx xxx xxx xxx xx (142)

Politically embarrassing material:
xxx xxx xxx xxx xxx xxx xxx xxx xx (42)

Claims of military or police misconduct:
xxx xxx xxx xxx xx (22)

References to state symbols or bodies:
xxx xxx xxx xx (17)

Source: WPFC survey

In 1998, for example, the Bulgarian Supreme Court ruled that the insult law there was acceptable because there are such laws in the Western democracies.

Other post-Communist presidents who regularly have had journalists prosecuted for sullyng their “honor and dignity” are Heidar Aliev of Azerbaijan,

Askar Akyev of Kirgizstan (while billing himself as Central Asia's most democratic president), President Lukachenko of Belarus, President Leonid Kuchma of Ukraine, and the late President Franjo Tudjman of Croatia, who left a legacy of something like 2,000 libel cases pending against the press when he died.

Repeal of obsolete insult laws in democracies where they are no longer invoked, so that they could

***Democracies should eliminate
obsolete, restrictive texts***

no longer be used as bad examples by non-democratic governments, would provide great support for press freedom throughout the world.

It would seem self-evident, in this year of 2000, that no journalist -- no person -- should go to jail anywhere for what he or she writes.

If enlightened European and Latin American countries were to set a good example, by repealing insult laws, then authoritarians and dictators from Cameroon to Kazakstan and beyond would no longer be able to say that it is acceptable to jail journalists for criticizing or reporting honestly about a chief of state or other high official because the legal texts that make this possible are nothing but copies of the laws on the books in the homelands of democracy.

Latin America, Europe could lead way

More than six years ago, in its 1994 Annual Report, the Inter-American Commission on Human Rights declared that *desacato* laws in Latin America that shield public officials from public scrutiny are incompatible with the American Convention on Human Rights. It called on Latin American nations maintaining these laws to wipe them off their books.

But *desacato* or insult laws remain intact and in effect in at least 18 countries of the hemisphere, providing convenient cover for government officials who do not wish to answer for their actions and policies to the people they represent.

One need not look far for examples. Chilean journalist Alejandra Matus, charged under an “insult” provision of Chile’s state security law with defaming Chilean judges in her book, “The Black Book of Chilean Justice,” was forced into exile.

Another Chilean journalist, Jose Ale Aravena, was convicted of “insulting” the former president of the Supreme Court. He, too, was charged under the state security law’s “insult” provision, and was given a suspended 541-day prison sentence. He was later pardoned by the new president, Ricardo Lago.

And Chile is not alone in clinging to these anachronistic laws. They exist also in Bolivia, Brazil,

Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Peru, Uruguay and Venezuela.

**Insult laws have been repealed
or otherwise invalidated in:**

Japan – 1947
Sweden – 1976
South Korea – 1988
Yugoslavia – 1992
Argentina – 1994
Hungary – 1994
Czech Republic – 1994
Spain – 1995
Moldova – 1996
Uzbekistan – 1996
Egypt – 1996
Kenya – 1997
Sri Lanka – 1997
Paraguay – 1998

Politicians in some Latin American countries with insult laws have denounced the laws and vowed to get rid of them. But in the years since the Inter-American Commission's report in 1994 urging repeal, only Paraguay has eliminated its *desacato* law from the criminal code. Argentina, the other regional country to have shed its *desacato* law, did so prior to the Commission's

recommendation, following journalist Horacio Verbitsky's long battle against those charges.

Recently, Costa Rica seemed close to rejection of its *desacato* law provisions. Inexplicably, the effort collapsed, indicating that perhaps in Costa Rica and elsewhere in Latin America and Europe, would-be reformers merely need encouragement and better political "cover" for moving to eliminate insult laws.

Why insult laws should fall

The arguments against restrictive insult and similar laws are easily marshaled:

1. Legal remedies already exist, in civil libel and slander legislation, to provide recourse for perceived defamation.
2. Public officials deserve less -- not more -- protection from reporting and commentary than ordinary citizens. Having sought public office, they are the servants of the public, not its masters. The European Court of Human Rights has on numerous occasions expressed this view in turning aside legal efforts to punish "insult." It said in a case involving Croatia's irreverent Feral Tribune, "the very function of the press in a democratic society (is) to participate in the political process by checking on the develop-

ment of the debate of public issues carried on by political office-holders.”

3. Democracy and economic prosperity are not possible without public accountability of leaders, transparency in transactions, and vigorous public discussion of issues and choices.
4. Press freedom cannot be said to exist in a nation where journalists are jailed for their work. And without press freedom, no nation can call itself a democracy.
5. Full participation in the international political and economic community is not possible as long as a nation fails to abide by the principles of good governance accepted by that community. All nations are bound by the Universal Declaration of Human Rights, and its broad call for the free flow of information and ideas through any media and regardless of frontiers.

Several years ago, in a speech delivered at a meeting of the Commonwealth Press Union in South Africa, WPFC Chairman James H. Ottaway, Jr. and General Counsel Leonard H. Marks urged a global campaign against “insult” laws. Since then, WPFC has been working to set in place the structures and means with which to wage this global battle.

The lines are now set, and in Europe and Latin America especially, there is opportunity to lead the

way to dispense with these outdated and counterproductive laws.

What can be done

A. In the courts

In consultation with expert media lawyers, the WPFC has produced a model friend-of-the-court brief presenting the legal case against insult law and similar charges. This can help defendants in these cases now.

Press freedom advocates can request hearings and state positions before the regional and global human rights tribunals, and can urge government leaders to refer precedent-setting cases to human rights commissions and courts.

B. In the legislatures

When journalists and lawmakers in the country determine that they are ready to take action toward reform, the international free-press community can help mobilize missions to lawmakers needing encouragement, those resistant to change and those sitting on the edge.

Armed with opinions of international bodies such as the European Court of Human Rights, the UN Human Rights Commission and the Organization of

American States, delegation members can show that now is the time to make the changes needed to function as full partners in today's international community.

The Inter-American Commission on Human Rights, in its 1994 Annual Report, provides strong support in the Americas for the legal argument that *desacato* laws are inconsistent with the American Convention on Human Rights and other international human rights declarations. Decisions of the European Court of Human Rights also make clear the dangers of such laws.

C. In the public arena

Those supporting press freedom, in editorial offices and organizations throughout the world, are urged to write columns and editorials, cover insult law and similar cases, make speeches, adopt resolutions and take similar action to educate decision makers and others to the truth we already know:

In free and democratic societies, the goal must be more discourse, not less; and in free and democratic societies, the journalist, as surrogate for the people, must be a watch dog -- not a lap dog.

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