

## Arab Media Regulations: Identifying Restraints on Freedom of the Press in the Laws of Six Arabian Peninsula Countries

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**ARAB MEDIA REGULATIONS: IDENTIFYING RESTRAINTS ON  
FREEDOM OF THE PRESS IN THE LAWS OF SIX ARABIAN  
PENINSULA COUNTRIES**

*Matt J. Duffy*

**I. INTRODUCTION**

The movement later dubbed the “Arab Spring” started in December 2010 when Mohamed Bouazizi, a Tunisian produce vendor, doused his body with gasoline and set himself on fire to protest the endemic corruption in his country. His death galvanized Tunisians and led to a rare peaceful protest in the autocratic country. Amateur videos of the protest were posted on social media sites and quickly went viral, circumventing Tunisia’s state-controlled media system. The Al Jazeera news network aired the videos more broadly and unrest spread throughout the country.<sup>1</sup> The next month, Zine el Abidine Ben Ali, Tunisia’s authoritarian president for more than 23 years, fled to Saudi Arabia amid massive protests.<sup>2</sup> Aided by social media and regional news networks, the protest movement born in Tunisia spread to many countries in the Arab world.

Both public and private state-controlled media in these countries generally ignored or downplayed the swarming protests and other unrest. But social media sites such as Twitter, Facebook, and YouTube provided the activists a forum to publicize and organize their movements. The use of social media to circumvent state-controlled outlets has brought renewed attention to media regulations in the region, which have for decades imposed widespread censorship and tightly restricted information.<sup>3</sup> Applying Siebert, Peterson, and Schramm’s “Four Theories of the Press” framework, Arab countries generally fit into the authoritarian media system model, although specific situations vary from country

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1. Yasmine Ryan, *How Tunisia’s Revolution Began*, AL JAZEERA ENGLISH (Jan. 26, 2011), <http://www.aljazeera.com/indepth/features/2011/01/2011126121815985483.html>.

2. Edward Cody & Joby Warrick, *Unrest Continues in Tunisia as President Ben Ali Flees Country*, THE WASHINGTON POST (Jan. 15, 2011), available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/14/AR2011011401131.html>.

3. See, e.g., Mohamed Elmasry, *Producing News in Mubarak’s Egypt: An Analysis of Egyptian Newspaper Production During Late Hosni Mubarak Era*, 4 JOURNAL OF ARAB AND MUSLIM MEDIA RESEARCH 121 (2011); NOHA MELLOR, *THE MAKING OF ARAB NEWS* 6 (2005); LAWRENCE PINTAK, *THE NEW ARAB JOURNALIST* 11 (2011); WILLIAM A. RUGH, *ARAB MASS MEDIA* 59 (2004).

to country.<sup>4</sup> These media systems are set up by government licensing under laws that exhaustively regulate the actions of journalists, creating a press that tends to support state policies rather than act as a watchdog. William Rugh, who says that Arab media systems do not fit perfectly into the authoritarian model, notes that the Arab journalist must be “highly sensitive to the political realities prevailing in his country.”<sup>5</sup> Part of these political realities is the general lack of legal protections for journalists alongside other regulatory impediments such as a lack of transparency and a leadership that does not necessarily welcome accountability. But apart from a few pages in international media law books, no scholars have offered a detailed study of the laws that are in place and how they affect journalism in the Arab world.<sup>6</sup>

Three factors underlie a collective avoidance of research dedicated to the Arab world’s media laws in the academic community. First, a lack of academic freedom in the region hinders rigorous research of media policy.<sup>7</sup> A culture of self-censorship pervades Arab universities because academics that tread too close to “sensitive” subjects (such as the mechanisms used to censor the press) can lose their position or be expelled from host countries. Second, language is a barrier. With many Arabic-speaking researchers avoiding rigorous study of media regulation, English-language academics are left to fill the void. In many Arab countries, media laws are written in Arabic without English translations. Therefore, English-speaking academics—who may also have more knowledge about international approaches to such laws—are unable to examine source material. Finally, a general lack of transparency (in all areas including media laws) makes it difficult to obtain source materials and other specific information, whether in Arabic or English. These factors collectively result in the region seeing little media law scholarship beyond cursory overviews in international media law texts and yearly “not free” rankings from press watchdog organizations.

This article aims to begin to fill this void and provide a foundation for future research. Rather than examining the entire Arab world, the author focuses on the Gulf Cooperation Council (GCC) countries—Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE). With the exception of Bahrain, these countries have largely escaped the widespread strife seen in other Arab nations since 2011. However, calls for reform and responses from the

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4. FRED S. SIEBERT ET AL., *FOUR THEORIES OF THE PRESS* 9 (1963).

5. WILLIAM A. RUGH, *ARAB MASS MEDIA* xvi (2004).

6. CHARLES GLASSER JR., *INTERNATIONAL LIBEL AND PRIVACY HANDBOOK* 477 (3d ed. 2013).

7. See, e.g., Laurie A. Brand, *Middle East Studies and Academic Freedom*, 8 *INTERNATIONAL STUDIES PERSPECTIVES* 384 (2007); Basyouni Ibrahim Hamada, *Communication Revolution and Academic Freedom*, 3 *JOURNAL OF ARAB & MUSLIM MEDIA RESEARCH* 37 (2010); Ursula Lindsey, *Concern Re-Emerges Over Academic Freedom in Persian Gulf Countries*, 59 *CHRONICLE OF HIGHER EDUCATION* A16 (2013).

government—in the form of arrests and other punitive actions—have taken place in all of them.

## II. LITERATURE REVIEW

All the GCC countries have ties to Great Britain, either as former protectorates or colonies or through long-held relationships with British advisors. The link to Great Britain may help explain why the legal environment is currently so restrictive for media outlets. Amartya Sen, among others, has documented the historic British tendency to practice rigorous censorship in its colonies as a means of subduing the local populations.<sup>8</sup> In some cases, British advisers helped draft the constitutions and other laws as they left the area.<sup>9</sup> Unelected indigenous rulers taking control of the formerly British possessions may have found the restrictive media laws appealing.

All the GCC countries feature court systems with appeals courts and supreme courts; however, observers generally do not consider the judiciaries to be truly independent.<sup>10</sup> In one case in the UAE, an appeals court overturned a defamation ruling after the ruler of Dubai expressed his dissatisfaction with the judgment.<sup>11</sup> One Emirati commentator noted: “One of the reasons why the judiciary is not independent is the fact that many judges are themselves not citizens of these Gulf States, nor are appointments assured for life.”<sup>12</sup> An Arab expatriate judge (from Egypt, Sudan, Morocco or Tunisia, for instance) would have little reason to challenge the legal status quo in his country of employment. The salary and lifestyle in the Gulf make the position of judge rather appealing, particularly when compared to the setting in the jurist’s country of origin. The situation creates a judiciary extremely prone to influence from the leadership of the countries in which they serve.

All the GCC countries (with the exception of Saudi Arabia) have provisions in their constitutions guaranteeing freedom of speech as well as caveats limiting this freedom. For instance, Article 48 of Qatar’s Constitution states: “Freedom of press, printing and publication shall be guaranteed in

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8. See AMARTYA SEN, *THE IDEA OF JUSTICE* 341 (Reprint ed. 2011).

9. CHRISTOPHER M. DAVIDSON, *ABU DHABI* 60 (2009).

10. Adel Omar Sharif & Nathan J. Brown, *Judicial Independence in the Arab World*, UNITED NATIONS DEVELOPMENT PROGRAMME 9 (2002), available at [http://www.deontologie-judiciaire.umontreal.ca/en/textes%20int/documents/ONU\\_jud\\_independence\\_MONDE\\_ARABE.pdf](http://www.deontologie-judiciaire.umontreal.ca/en/textes%20int/documents/ONU_jud_independence_MONDE_ARABE.pdf).

11. Shadiah Abdullah, *Dubai Court Overturns Verdict in Libel Case*, ARAB NEWS (Sept. 9, 2007), <http://cms.arabnews.com/node/305484>.

12. Sultan Al Qassemi, *Institutionalising the Arab Gulf Governments*, OPEN DEMOCRACY (Jan. 1, 2013), <http://www.opendemocracy.net/sultan-sooud-al-qassemi/institutionalising-arab-gulf-governments>.

*accordance with law* (emphasis added).<sup>13</sup> However, “in accordance with law” should not necessarily be seen as the reason for dilution of freedom of expression. One should note that while the U.S. Constitution is far more absolute (“Congress shall make no law . . . abridging freedom of speech”), lawmakers and the Supreme Court have nonetheless specified situations in which speech may be abridged or restricted such as libel and slander, some campaign speech, calls for violence, indecency and obscenity, securities regulation, and rules surrounding advertising.<sup>14</sup> More likely causes for the paucity of press freedoms in the GCC countries are the specific laws that restrict speech and the lack of an independent judiciary willing to enforce constitutional provisions as a means to limit the power of rulers and other government officials.

Arab judges tend to offer few defenses for journalists and the prominence of Islam means the culture leans heavily toward conservatism. Charles Glasser and Ava Macalpin discuss the difficulty of practicing journalism in the Middle East in their book on international media laws for journalists:

The two most significant problems are that, first, the scant press law that there is offers few if any meaningful guarantees for a free and robust media: at the same time it prescribes severe criminal penalties for vaguely defined forms of defamation. Second, there is a strong Islamic undercurrent in any approach to publication or broadcast. Even in those nations that may not describe themselves as theocracies, the political and cultural power of fundamentalist Islam permeates the legal foundation.<sup>15</sup>

Of the GCC countries, only Saudi Arabia is considered a theocracy, but Islam is central to the other five as well. The current analysis focuses on the laws rather than the religion. However, some of the laws address issues of “public morals,” which naturally involve Islam and the strong role of religion in Arabian Gulf society.

The GCC countries are generally regarded as having adopted Sharia legal systems that are “seen as a divine or divinely inspired source of law”<sup>16</sup> as opposed to common law (based on British legal systems and their colonies) or civil law (based on European systems). In Sharia legal systems, the Islamic Quran provides

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13. CONSTITUTION OF QATAR, 2003, art. 48, *available at* <http://www.qatarembassy.net/constitution.asp>.

14. COMMUNICATION AND THE LAW (W. Wat Hopkins ed., 2012).

15. GLASSER JR., *supra* note 6, at 184.

16. Michael Bohlander, *Radbruch Redux*, 24 LEIDEN JOURNAL OF INTERNATIONAL LAW 393, 395 (2011).

the basis of judicial rulings. In reality, Islamic countries tend to widen their legal influences beyond “pure” Sharia, relying “on codes that may be based to differing degrees on previous colonial principles and indigenous attitudes.”<sup>17</sup> Therefore, the GCC countries to varying degrees rely upon common law systems (given the British colonial influences) particularly since many of these nations are interested in creating legal systems that are conducive to international investment.

Given the constrained environment for journalism, GCC countries fare quite poorly in international press freedom rankings. Two nongovernment organizations, the Paris-based Reporters Without Borders and the Washington, D.C.–based Freedom House, rank press freedom around the world, using similar methods in every country. They ask experts—practicing journalists, academic researchers, and media observers—to answer questions about the harassment of journalists (including arrests and police questioning), the media’s ability to investigate and criticize the government, the level of self-censorship, the financial ownership of media outlets, and the legal framework of each country. After tabulation, Freedom House releases a press freedom ranking between 1 and 100 and a label of either “free,” “partly free,” or “not free.”<sup>18</sup> Reporters Without Borders uses a numerical ranking between 1 and 179, with higher numbers indicating less freedom. The United States, most of Europe, Japan, and several countries in Central and South America typically fall within the free end of rankings.<sup>19</sup> China and some other Asian countries, as well as most of the Middle East, usually fare poorly because of a restrictive media environment. Of the GCC countries, only Kuwait avoids the “not free” label (see Table 1). Observers point out that a relatively strong culture of open debate in Kuwait (facilitated by a robust parliamentary system) and a press that often takes issue with the government lead to its higher spot in the rankings and a label of “partly free.”

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17. *Id.* at 396.

18. Higher numbers indicate less press freedom. Rankings between 1 and 30 receive the “free” label with 31 to 60 receiving “partly free” and all other countries receiving “not free.”

19. The top countries are usually Scandinavian and Northern European nations that feature wide latitude for free expression coupled with limited media consolidation and robust media diversity.

Table 1 – Press freedom rankings of GCC countries

| <i>Country</i> | <i>Reporters Without Borders<br/>(2012)<br/>(1 to 179)</i> | <i>Freedom House<br/>Press Freedom Category (2012)<br/>(Free, Partly Free, or Not Free)</i> |
|----------------|--|---|
| Bahrain        | 165  | Not Free  |
| Kuwait         | 77   | Partly Free   |
| Oman           | 141  | Not Free  |
| Qatar          | 110  | Not Free  |
| Saudi Arabia   | 163  | Not Free  |
| UAE            | 114  | Not Free  |

### III. METHODOLOGY

This study examines a variety of primary and secondary sources. Primary sources include constitutions, penal codes, media laws, and other legislation from each country. Secondary sources include local newspaper accounts, blog posts, and reports from international press watchdog organizations. These primary and secondary sources are analyzed for their effects on the media landscape. Obtaining the source material was quite difficult but aided by the Doha Centre for Media Freedom in Qatar, which funded the translation of the media laws, most of which were only available in Arabic.<sup>20</sup> The author analyzes the laws and identifies the common elements that most often lead to restrictions in press freedom. These regulations are then compared to international approaches taken by other governments—particularly those identified as having elevated levels of press freedom.

For theoretical grounding, this analysis uses wording from the United Nations International Covenant on Civil and Political Rights (ICCPR) that guides governments on how to balance the right to free expression with other obligations (e.g., protection of reputation and public order). By using the covenant as a guide, the author divides the laws into two categories: legislation that fits within international norms related to press regulation and laws situated outside this realm. The article concludes with recommendations for modifying penal, media and cybercrime laws to ensure a larger role for freedom of the press while balancing the need to respect cultural sensibilities.

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20. The Doha Centre for Media Freedom, a government-funded organization ostensibly dedicated to increasing media freedoms around the world, supported this research. The foundation for this article was published on its website in both English and Arabic: [http://www.dc4mf.org/sites/default/files/gcc\\_media\\_law\\_en\\_0.pdf](http://www.dc4mf.org/sites/default/files/gcc_media_law_en_0.pdf).

This analysis focuses on legislation in the GCC countries rather than the interpretation of court cases because the judicial systems are not based on precedent. Judges generally rule based on the specific guidance laid out in the official legislation, not on how a previous court ruled or a higher court interpreted a previous case.<sup>21</sup> For this reason, the starting point (and ending point) for any discussion of legality regarding the media rests with the primary legislation.

This article features several notable limitations, particularly when compared to traditional communication law and policy research. First, the only primary sources examined in this analysis are the laws themselves. Traditionally, the legal rulings from each country would also be analyzed as primary sources; however, there can be no analysis of the legal rulings themselves because these documents simply do not exist. According to one lawyer who handles defamation cases in the GCC countries, the region's court rulings are short and "don't say very much in terms of judicial analysis."<sup>22</sup> Second, some of the court cases in which these laws were applied will be examined through secondary sources such as local newspapers and international press watchdog observations. But, the restrictive laws in each country often hamper the reporting of legal cases. For instance, all GCC countries feature a statute that makes it a crime to report a legal hearing in a misleading way. This environment leads local journalists to offer the barest of facts, and key parts of the ruling (e.g., whether truth was allowed as a defense in a defamation case) will often be left out of the reporting.<sup>23</sup> These limitations mean that the analysis will be far less robust than typical legal research.

Despite these limitations, the importance of this examination and analysis of the primary sources of the media regulations should not be understated. Four out of six of the GCC countries' media laws had never been translated into English from Arabic.<sup>24</sup> Also, it should be stressed that no Arab-language scholars have conducted any type of research analyzing and comparing the media laws to international approaches, despite the availability of these laws in Arabic.<sup>25</sup> As stressed earlier, a widespread culture of self-censorship in the Middle East academic community prohibits research into specific areas deemed "sensitive." For these reasons, this article represents an important contribution to the limited literature on Arab media regulation.

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21. ALASTAIR MULLIS & CAMERON DOLEY, CARTER-RUCK ON LIBEL AND PRIVACY (2010).

22. Email interview with Raza Rizvi (Mar. 31, 2013).

23. Mullis & Doley, *supra* note 21.

24. Only the UAE had posted an English version of its 1980 media law on the National Media Council website. The other media law translations can be found at the website: [www.arabmedialawproject.org](http://www.arabmedialawproject.org).

25. Email interview with Mohamed Kirat (Mar. 24, 2013).



#### IV. THEORETICAL GROUNDING

The Arab world is not alone in struggling to find a proper balance between freedom of the press, protection of other rights, and stability. All nations with established press freedoms have clearly demarcated areas in which restricting speech may be necessary.

The ICCPR acknowledges this need for balance by creating a framework to help guide governments in developing regulations around freedom of speech.<sup>26</sup> It states:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order or of public health or morals.<sup>27</sup>

Therefore, the ICCPR guarantees freedom of speech but expressly notes which areas justify limits being placed upon it: protection of reputation (defamation), national security and public order, and public health and morals.<sup>28</sup> The following section examines each of the areas that are limited in the GCC legal systems. A separate section is then devoted to areas in which the GCC media laws restrict speech beyond the international standards outlined by the ICCPR.

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26. Only Kuwait and Bahrain have ratified the ICCPR.

27. ICCPR sec. 19, Dec. 16, 1966, *available at* <http://www2.ohchr.org/english/law/ccpr.htm#art19>.

28. Court rulings from the U.S. Supreme Court, Inter-American Court of Human Rights, and European Court of Human Rights have generally demarcated these same boundaries.

## V. FINDINGS AND DISCUSSION

In most GCC countries, three main legal areas restrict communication: penal codes, media laws, and “cybercrime” laws, which cover electronic communication.

Penal codes apply to a wide range of crimes but often contain two specific clauses that affect journalism or communication: criminal defamation laws and prohibitions against criticizing or insulting the head of state. Accusations of defamation (either libel or slander) and insulting or offensive comments can be reported to police as criminal offenses that lead to arrests, fines, and prison sentences. Prosecutors may also bring charges against citizens who criticize or offend the head of state, a move many see as being aimed at squashing critical speech.

The media laws contain provisions for the licensing of news outlets and journalists, and detail a wide array of prohibitions for journalists. Bahrain (2002), Kuwait (2006), and Saudi Arabia (2003) all updated their media laws in the 2000s. Oman (1984), Qatar (1979), and the UAE (1980) are still applying media laws created in a different communication era.

Each country also has “cybercrime” laws that regulate the Internet and other digital communications. In the wake of the Arab Spring, the UAE (2012) and Oman (2011) updated their cybercrime laws, increasing penalties for various crimes including defamation, dissemination of “false news,” and criticism of the government via digital communications.<sup>29</sup> Many observers saw these actions as moves to curtail critical speech on social media outlets such as Twitter, an increasingly popular source of information because of pervasive self-censorship in the mainstream press.

Saudi Arabia stands apart from the rest of the GCC countries in two respects. First, the country is the only one of the six that does not protect freedom of expression in its constitution. In addition, the country has no written penal code. Instead, the Saudi “security forces and courts rely on vague and somewhat elastic concepts of criminal legislation” leading to a nebulous playing field in which journalists and others operate.<sup>30</sup>

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29. *Cyber Crime Law*, MUSCAT DAILY NEWS (Aug. 8, 2012), <http://www.muscatdaily.com/Archive/Oman/Cyber-Crime-Law-1m6r>; UAE: FEDERAL-DECREE LAW NO. (5) OF 2012 ON COMBATING CYBERCRIMES, [http://ejustice.gov.ae/downloads/latest\\_laws/cybercrimes\\_5\\_2012\\_en.pdf](http://ejustice.gov.ae/downloads/latest_laws/cybercrimes_5_2012_en.pdf).

30. *Saudi Arabia*, REPORTERS WITHOUT BORDER (Dec. 15, 2009), <http://en.rsf.org/saudi-arabia-saudi-arabia-15-12-2009,32780>.

## A. *LEGITIMATE AREAS OF PRESS RESTRICTION*

### 1. *Protection of reputation—defamation laws*

Before addressing the GCC's defamation laws, a discussion of international approaches toward libel and slander may be helpful. In countries known for high levels of press autonomy and freedom of expression, the courts and statutes share common traits.

Foremost, defamation is treated as a civil charge, not a criminal offense. An individual or entity may sue and win financial damages in cases in which defamation can be proven. This approach has evolved over the years, moving away from treating defamation as a criminal offense for which charges result in arrest and a prison sentence. Criminal libel—as opposed to civil libel—has been widely judged to unduly restrict freedom of expression.<sup>31</sup> The United Nations Human Rights Commission advocates eliminating criminal libel completely: “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”<sup>32</sup> This civil approach toward defamation is seen throughout the world (not just in Western countries) in localities as diverse as Chile, Japan, South Korea, Costa Rica, the European Union, Canada, and the United States.<sup>33</sup> In several countries—Bosnia-Herzegovina (2002), Central African Republic (2004), Georgia (2004), Ghana (2001), Sri Lanka (2002), Togo (2004), and the Ukraine (2001)—criminal defamation laws have recently been removed from the statutes. In these and many other countries, the civil courts were found to be adequate for protecting reputation.<sup>34</sup> In many jurisdictions, the original intent for criminal libel charges (e.g., to maintain public order) has been shifted to other statutes and given specific guidelines such as forbidding communication that calls for “imminent lawless action.”<sup>35</sup>

Another hallmark of defamation laws in countries with strong press protections is the concept of truth as a defense for libel. This approach traces back to the colonial America case in which publisher John Peter Zenger was absolved of criminal libel charges brought by the Governor of New York because he

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31. Gregory C. Lisby, *No Place in the Law*, 9 COMMUNICATION LAW & POLICY 433 (2004).

32. *Criminal defamation*, ARTICLE 19, <http://www.article19.org/pages/en/criminal-defamation.html> (last visited June 8, 2014).

33. GLASSER JR., *supra* note 6.

34. STEVE BUCKLEY ET AL., BROADCASTING, VOICE, AND ACCOUNTABILITY 111 (World Bank Publications 2008).

35. Mark Strasser, *Mill, Holmes, Brandeis, and a True Threat to Brandenburg*, 26 BYU JOURNAL OF PUBLIC LAW 37 (2011).

proved his allegations were true.<sup>36</sup> The reasoning behind this approach is that one should not be allowed to protect a reputation one does not deserve. This general truth-as-a-defense perspective exists in many nations. The European Court of Human Rights ruled that a writer had his right to free expression violated because Spain did not permit him to prove whether his statements in a defamation case were true.<sup>37</sup> The case created a precedent across Europe for truth to be a defense in any defamation case.

Another generally accepted “best practice” in defamation law is the idea that private figures should win libel cases more easily than public figures. The differentiation arises from the reasoning that matters of public concern (and thereby involving public figures) should be given more latitude to encourage open and active debate. Conversely, nonpublic figures should receive more shielding to protect their privacy. U.S. courts use this two-tier approach toward libel. To win a libel lawsuit against a journalist (after proving a statement was disseminated, caused harm, and was true), a private figure must only show that the journalist acted with negligence (i.e., did not follow normal protocol for accuracy). A public figure, on the other hand, must prove that the journalist acted with “actual malice,” knowingly or recklessly disregarding the truth.<sup>38</sup> This general approach (differentiating between a private and public figure) exists in Australia, Europe, Japan, South Korea, and many South American countries.<sup>39</sup> Courts and legislatures have reasoned that public figures must tolerate some defamatory speech in order to create a healthy environment for public debate.

This analysis finds that the laws of the GCC countries do not align with the three previously described practices—civil rather than criminal cases, truth as a defense for libel, and a higher burden of proof for libeling a public figure. One of the reasons for this difference is a variance in cultural perspectives. Hafez notes that such an approach stems from an assumption that “every person’s right to honor and good reputation is a central value in Arab and Islamic communication ethics in both secular and religious traditions.”<sup>40</sup>

In the GCC countries, as well as the Arab world in general, the legal approach toward defamation is criminal rather than civil. Libel and slander are treated as criminal offenses, meaning that accusations are brought to police and usually lead to an arrest. The laws against defamation can be found in both the penal codes and media laws of the countries. For instance, Article 364 of

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36. WILLIAM LOWELL PUTNAM, JOHN PETER ZENGER AND THE FUNDAMENTAL FREEDOM 98 (1997).

37. *Castells v. Spain*, 14 E.H.R.R. 445 (1992), available at [http://www.hrcr.org/safrica/expression/ECHR\\_Castells.htm](http://www.hrcr.org/safrica/expression/ECHR_Castells.htm).

38. JOHN ZELEZNY, COMMUNICATIONS LAW 141 (2010).

39. GLASSER JR., *supra* note 6.

40. Kai Hafez, *Journalism Ethics Revisited*, 19 POLITICAL COMM. 225, 230 (2002).

Bahrain's penal code calls for six months in prison or a modest fine for written or verbal speech that "affects one's honor or puts families into disrepute."<sup>41</sup> Article 20 of the recently updated cybercrime law in the UAE creates a category of criminal defamation for digital communication that applies to anyone who "accuses another person of a matter of which he shall be subject to punishment or [be] held in contempt by others."<sup>42</sup> The penalty for digital defamation is particularly harsh—a punitive fine between \$67,500 and \$135,000 as well as an unspecified jail sentence. In Qatar, Article 326 of the penal code promises up to two years imprisonment or a fine of 20,000 Riyals (\$5,400) for "defaming someone in public through accusing them of doing a mishap necessitating a legal punishment or inflicting their dignity or honor or exposing them to people's disdain and malice."<sup>43</sup> Saudi Arabia, Kuwait and Oman also treat libel as a criminal offense.

Whether truth can be used as a defense against libel in GCC countries is unclear. Some laws do specifically provide for such a defense in defamation cases. For instance, Article 21 of the Kuwait media law of 2006 makes illegal "attributing statements or acts not true to [a public official] which would cause harm or insult to his person."<sup>44</sup> The "not true" caveat appears to make truth a defense against defamation charges, at least if public figures are involved. Similarly, Article 328 of Qatar's penal code states that there is no crime if the "culprit proves the occurrence of the incidence and reclines it against the public employee and the incidence is related to the job or the public service."<sup>45</sup> Other laws in the GCC countries make defamation illegal and do not offer any caveats regarding truth as a defense. And none of the laws allow for truth as a defense against private figures. For instance, Article 20 of the UAE's cybercrime law creates stiff penalties for injuring someone's reputation and makes no allowances for the statement being true. A lawyer for a Dubai-based firm that handles defamation cases stated that, "[t]ruth is a defense, but in this region it is not an absolute defense."<sup>46</sup> Adding to the confusion, media laws in the GCC countries also contain defamation provisions, and generally do not provide any wording that implies truth may be used as a defense. The result is a legal environment in which a journalist could win a case brought under a penal code but lose the case under the media law provision. Regardless, in no cases examined for this analysis did

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41. BAHRAIN PENAL CODE (1976).

42. UAE: FEDERAL-DECREE LAW NO. (5) OF 2012 ON COMBATING CYBERCRIMES, [http://ejustice.gov.ae/downloads/latest\\_laws/cybercrimes\\_5\\_2012\\_en.pdf](http://ejustice.gov.ae/downloads/latest_laws/cybercrimes_5_2012_en.pdf).

43. QATAR PENAL CODE (2004).

44. Kuwait: Press and Publications Law, LAW NO. 3 (2006).

45. Qatar Penal Code, *supra* note 43.

46. Kevin Brass, *Defamation Laws Keep the Aggrieved Quiet*, THE NATIONAL (Nov. 8, 2011), <http://www.thenational.ae/thenationalconversation/industry-insights/property/defamation-laws-keep-the-aggrieved-quiet>.

the author find a journalist absolved of defamation charges because he proved the charges were true.<sup>47</sup> In many cases, journalists lose defamation trials simply because their reporting harmed the reputation of the public officials they were covering.<sup>48</sup> The absence of clear laws and precedents that protect journalists from defamation charges arising from truthful reporting about public figures is a major impediment to press freedom in the region.

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47. The cases were examined during the course of research, usually as briefs from press freedom groups Reporters Without Borders and Freedom House as well as rights organizations Amnesty International and Human Rights Watch. Some cases were analyzed through local press reports.

48. *Five-month jail terms for two journalists confirmed on appeal*, REPORTERS WITHOUT BORDERS (Jan. 12, 2012), <http://en.rsf.org/oman-muscat-based-newspaper-closed-13-08-2011,40783.html>; *Journalist sentenced to three years in prison in absentia*, REPORTERS WITHOUT BORDERS (Jun. 23, 2008), <http://en.rsf.org/qatar-journalist-sentenced-to-three-23-06-2008,27594.html>.

Table 2 – Truth as a defense in GCC penal codes

| <i>Country</i> | <i>Article Number</i> | <i>Comment</i>  |
|----------------|-----------------------|---|
| Bahrain        | Article 367           | Truth a defense if against public servant.  |
|                | Article 370           | Private figures receive defamation protection “even if true.”   |
| Kuwait         | Article 16            | No reference to truth as defense. Any act that may damage the “reputation, dignity or standing of any person.”  |
| Oman           | Article 173           | Does not address truth as defense. Only concerns defamation of a public figure, banning “publicly or by publication, and by speech or gestures” anything that affronts a public official performing his duty. |
| Qatar          | Article 328           | No crime if “culprit proves the occurrence of the incident” against a public employee.  |
|                | Article 331           | Truth not a defense. Illegal to “spread news, photos or comments related to secrets of private life, or families, or individuals even if they were true.”   |
| Saudi Arabia   | No formal penal code  |   |
| UAE            | Article 372           | Truth not mentioned as a defense. “Whoever attributes to another person by any means of publicity, an incident which makes him liable to punishment or contempt.”   |

|             |  |
|-------------|--|
| Article 373 | Truth of allegation mentioned. Makes illegal a “false accusation which dishonors or discredits a man in estimate of public, without imputing any specific incident to him.”  |
| Article 375 | Truth a defense against public officials. “There is no crime if the offender proves the reality of the incident ... (when) such incrimination is performed against a public officer or a person to whom a public service is assigned.” |
| Article 378 | Truth not mentioned as a defense. “Whoever attributes to another person by any means of publicity, an incident which makes him liable to punishment or contempt.”  |

All GCC countries also provide extra protection for public officials in defamation cases as compared to private figures. For instance, Article 327 of Qatar’s penal code raises the penalty from two years in prison to three years for defaming a “public employee due to the job or the occupation, or if the (defamation) inflicts the family’s reputation.”<sup>49</sup> Article 173 of Oman’s penal code bans “publicly or by publication, and by speech or gestures” anything that affronts a public official performing his duty.<sup>50</sup> It does not mention any penalty for a private figure. Offering public figures more protection against libel than that afforded to private figures differs from internationally accepted practices. As already mentioned, many courts and legislatures have reasoned that public figures dealing with public affairs should be more open to criticism than private figures.

Most of the GCC countries have seen defamation charges that led to the arrest and imprisonment of journalists. In 2006, for instance, Bahrain arrested a

49. Qatar Penal Code, *supra* note 43.

50. Omani Penal Code, ROYAL DECREE N. 7/74 (1974).



prominent blogger on a defamation charge after he criticized a government agency. The government dropped the charges after the blogger agreed to remove the offending report.<sup>51</sup> In 2010, prosecutors in Kuwait won a one-year prison sentence against a foreign reporter for *Newsweek* accused of criminal defamation against the emir after he reported that a pro-government newspaper had stirred up religious strife. The sentence was later reduced to three months.<sup>52</sup> In the UAE, two journalists were fined and their newspaper closed for one month after they lost a criminal defamation case in 2009. The newspaper's report alleged that a prized racehorse owned by a member of the ruling family had been given steroids.<sup>53</sup> The journalists received a fine instead of a prison sentence because of a 2007 decree that essentially eliminated the jailing of journalists in the UAE.<sup>54</sup>

The criminal nature of these cases, the lack of clarity regarding truth as a defense, and the extra protection for public figures makes the GCC laws unfavorable to robust journalism.

## 2. National security and public order

The media laws of the GCC countries all contain provisions to protect national security and public order, and to maintain harmony in society. As opposed to some international approaches, these laws are all quite broad and far-reaching. For instance, Article 9 of the Saudi press law mandates that printed material "shall not lead to breach of public security, public policy or serving foreign interest that conflict with national interest."<sup>55</sup> Article 9 also bans anything that excites "fanatical instincts or stir(s) up discord among citizens." The law allows for a fine of up to \$13,500 and closure of the media outlet for up to two months. Article 25 of Oman's media law bans any offense against the ruling system or anything that "cause[s] harm to the public order."<sup>56</sup> The media law of the UAE contains several broad provisions such as Article 71, which prohibits publication of anything that "causes harm to the interest of the state or the values of society."<sup>57</sup> Article 72 states that "no opinions shall be published if they violate

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51. Habib Toumi, *Bahraini Minister Agrees to Drop Suit Against Blogger*, GULF NEWS (May 8, 2007), <http://gulfnews.com/news/gulf/bahrain/bahraini-minister-agrees-to-drop-suit-against-blogger-1.177616>.

52. *Freedom of the Press: Kuwait*, FREEDOM HOUSE (2011).

53. Loveday Morris, *Arabic Daily Suspended over Horse-Doping Libel*, THE NATIONAL (Jul. 3, 2009), <http://www.thenational.ae/news/uae-news/arabic-daily-suspended-over-horse-doping-libel>.

54. Salama Samir, *UAE Upholds Press Freedom*, GULF NEWS (Sep. 25, 2007), <http://gulfnews.com/news/gulf/uae/media/uae-upholds-press-freedom-1.202309>.

55. Saudi Arabia: Law of Printing and Publication, ROYAL DECREE, M/32, 3/9/1424 (2003).

56. Oman: Press and Publications Act, SULTAN DECREE NO. 49/84 (1984).

57. UAE: Press and Publications Act (1980).

public discipline and order, or involve insult to teenagers, or call for or circulate subversive ideas.” The law calls for prison time and fines for violators of these and other provisions.

These broad prohibitions against threatening public order can be problematic for journalism and free expression. Protecting public order is a social interest of the highest order, without which all other rights are at risk. But without careful and specific proscriptions for protecting such order, any limits on the media are inherently open for abuse. In the United States, no restrictions are placed on the press to ensure public order beyond the limits set up for speech in general. In *Brandenburg*, the Supreme Court reasoned that the government could only restrain speech likely to incite “imminent lawless action.”<sup>58</sup> In this landmark case, the State of Ohio argued that Clarence Brandenburg, a white supremacist, was advocating the overthrow of the government. However, the high court overturned his conviction on the grounds that his speech did not call for immediate violence and was therefore protected. Other jurisdictions have taken a similar approach to ensuring the state’s interest in maintaining “public order” while still allowing the greatest leeway possible for journalism and speech.<sup>59</sup> In Europe, the courts have drawn the line at “incitement to hatred,” arguing that such speech is a danger to democracy and therefore “falls outside normal protections for robust commentary on public affairs.”<sup>60</sup>

The overly broad public order provisions in the GCC media laws could easily lead to self-censorship by journalists. For instance, a reporter covering corruption at a government agency could be accused of damaging public order by shedding light on inequities. A Saudi journalist describing destitute conditions in a village could be accused of “inciting protests.” A journalist would be understandably reluctant to risk the potential consequences of such charges and therefore might opt for incomplete reporting.

In one instance, the Kuwaiti government targeted a pro-Shiite newspaper with its public order laws. In 2012, the government ordered a newspaper publisher jailed for six months on charges of upsetting the public order and inciting religious strife. The charges centered on two articles in the newspaper about Sunni-Shiite relations.<sup>61</sup> The Kuwaiti government also threatened to take action on public order grounds in 2013 over criticism in the same newspaper of Bahrain’s actions against Shiite protesters.<sup>62</sup> Neither report from the newspaper seemed to

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58. *Brandenburg v. Ohio*, 395 U.S. 444, 446 (1969).

59. BUCKLEY ET AL., *supra* note 34, at 127.

60. PERRY KELLER, EUROPEAN AND INTERNATIONAL MEDIA LAW 383 (2011).

61. *Six-Month Prison Sentence for Newspaper Editor*, REPORTERS WITHOUT BORDERS (Mar. 14, 2012), [http://en.rsf.org/kuwait-vote-campaign-marred-by-attacks-07-02-2012\\_41815.html](http://en.rsf.org/kuwait-vote-campaign-marred-by-attacks-07-02-2012_41815.html).

62. *Kuwait Set to Act Against Shiite Newspaper Al-Dar*, ARAB TIMES ONLINE (Mar. 22, 2013),

reach the incitement of “imminent lawless action” or “incitement to hatred” standard held in many jurisdictions. While governments must take action to ensure public order, the laws and rulings should be tailored to ensure journalism, critical speech, and legitimate dissent are protected.

### 3. *Public health and morals*

The media laws of the GCC countries feature many provisions meant to protect public health and morals. For instance, Article 47 of Qatar’s media law bans anything that would imply “offense to the public morals.”<sup>63</sup> Article 24 of the UAE Cybercrime Law prohibits publishing through any electronic means anything that would damage “the national unity or social peace or prejudice the public order and public morals.”<sup>64</sup> And all of the media laws of the GCC contain clauses mandating reverence for Islam and other “heavenly religions.”<sup>65</sup>

Restrictions for public morals are common internationally, but individual interpretation varies greatly. For instance, in the United States all obscenity<sup>66</sup> and some indecency<sup>67</sup> have been ruled to exist outside of First Amendment protection, although outright bans on pornography have been unsuccessful.<sup>68</sup> (All GCC countries ban the sale of pornography and block access to prurient websites.<sup>69</sup>) Europe also maintains differing levels of content guidelines depending on locality. As Keller noted:

European Union law nonetheless accepts that there is no common European standard in matters of public morals and that member states are entitled to a substantial margin of discretion when determining what content ought to be restricted on public morals grounds and what means should

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<http://www.arabtimesonline.com/NewsDetails/tabid/96/smId/414/ArticleID/167055/reftab/56/t/Kuwait-set-to-act-against-Shiite-newspaper-Al-Dar-Sat-Adala/Default.aspx>.

63. QATAR PRINTS AND PUBLICATION LAW (1979).

64. UAE: Federal-Decree Law, *supra* note 42.

65. Generally understood to refer to Judaism and Christianity, religions that share a common lineage with Islam.

66. The *Miller* test, established in a 1973 U.S. Supreme Court ruling, creates a three-prong rule to define obscenity: the work in its entirety 1) must arouse sexual lust; 2) describe, in a patently offensive way, sexual conduct specifically defined by applicable state law; and 3) contain no artistic social value. *Miller v. California*, 413 U.S. 15 (1973).

67. U.S. Supreme Court rulings have defined indecency as sexual expression on broadcast television and radio that is inappropriate for children.

68. ROBERT TRAGER ET AL., *THE LAW OF JOURNALISM AND MASS COMMUNICATION* 546 (2012).

69. *Bahrain: OpenNet Initiative* (Aug. 6, 2009); *UAE: OpenNet Initiative* (2009), <http://opennet.net/research/profiles/uae>.

be used, especially where the object of the restrictions is the protection of children.”<sup>70</sup>

The GCC countries appear to follow international standards in their approach; however, restrictions in the name of public morals go further in the GCC countries than they do in other parts of the world. For instance, Saudi Arabia views discussions of Islam that contradict the essential teachings of the religion to be a violation of public morals. In 2013, a liberal blogger was sentenced to 600 lashes and seven years in prison for his website that prosecutors said “infringes on religious values.”<sup>71</sup> The UN Human Rights Committee has said that restrictions for the protection of public morals should be limited in regards to religion. “The concept of morals derives from many social, philosophical, and religious traditions; consequently, limitations . . . for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition,” the group wrote in a 2011 statement.<sup>72</sup> The UN statement would therefore appear to limit prosecutions solely on the basis of religious-based public moral charges. However, the issue of public morals legislation and its interaction with religion is a complicated subject that deserves greater study outside the purview of this analysis.

#### *B. GCC RESTRICTIONS ON SPEECH BEYOND INTERNATIONAL NORMS*

The GCC constitutions contain a number of provisions that fall outside international norms regarding legitimate restrictions on freedom of expression (as defined earlier in the ICCPR). These restrictions include the licensing of journalism outlets and journalists, a ban on criticism against rulers and public officials, prohibitions on content that can harm the national economy, a mandate on truth in reporting, and other overly broad prohibitions.

##### *1. Licensing of news outlets and journalists*

Every country in the GCC requires by law the licensing of its media outlets and journalists. Many other media systems avoid such licensing except for broadcast outlets amid technical issues (spectrum scarcity) and concerns over content that could be heard or viewed by children. However, the GCC media laws apply to all media outlets including newspapers and online sites.

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70. Keller, *supra* note 60, at 361.

71. *Saudi Arabia: 600 Lashes, 7 Years for Activist*, HUMAN RIGHTS WATCH (Jul. 31, 2013), <http://www.hrw.org/news/2013/07/30/saudi-arabia-600-lashes-7-years-activist>.

72. *Id.*

The UAE media law lays out an emblematic approach toward the registration of a newspaper.<sup>73</sup> Article 25 instructs that the owner of the news outlet shall be a UAE national, not less than 25 years old, “fully competent,” of good conduct and behavior, not convicted of any moral offenses, not serving in a public post, and not employed by a foreign agency.<sup>74</sup> Journalists for news outlets also face similar legal restrictions. Articles 26 through 29 mandate that journalists in the UAE have at least a college degree and join a journalism association.<sup>75</sup> According to the media law, all journalists and media outlets must apply for and obtain license approval from a government ministry before they can begin broadcasting news.<sup>76</sup> Articles 31 to 35 mandate that a media outlet applicant must file appropriate paperwork with the government that includes the names and nationalities of the editors. The applicants must also make a financial deposit (around \$13,500) to cover “settlement of fines imposed by the provisions of this law or any other law.”<sup>77</sup> Article 36 states the media outlet cannot publish or broadcast if its license expires or if it is ordered to shut down by a proper authority. The UAE media laws are representative of press laws in the other GCC countries.

This highly regulatory approach differs sharply from the system in countries with established press freedoms, which avoid licensing journalists or non-broadcast news outlets. Generally, this lack of licensing is thought to ensure that journalists who undertake critical reporting will not be punished by authorities with the power to revoke their licenses.<sup>78</sup> In 1984, the Inter-American Court of Human Rights heard a case involving Costa Rica’s legislation that mandated journalists join a professional association on the grounds that such membership would improve journalism and benefit the public. Under the legislation, a journalist stripped of membership for some type of offense could effectively be barred from practicing journalism. The court ruled against the legislation:

[G]eneral welfare requires the greatest possible amount of information, and it is the full exercise of the right of expression that benefits this general welfare . . . A system that controls the right of expression in the name of a supposed guarantee of the

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73. UAE: Press and Publications Act, *supra* note 57.

74. *Id.*

75. *Id.*

76. The 1980 law refers to the Ministry of Culture and Information as the media oversight agency. That ministry was abolished in 2006 and replaced in part by the National Media Council, a new media regulation agency.

77. UAE: Press and Publications Act, *supra* note 57.

78. BUCKLEY ET AL., *supra* note 34, at 144.

correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has.<sup>79</sup>

The court saw potential use of the professional group as a tool of governmental retribution as too great a risk to freedom of the press.

On the other hand, most countries do license broadcast outlets because of the scarcity of television and radio spectrum as well as the “public morals” interest since the audio-visual medium is more pervasive than print. However, countries with high levels of press freedom provide statutory or judicial protection for the license granting and revocation process to assuage concerns about political retribution. For instance, the European Court of Human Rights has found that broadcast licensing “tainted with arbitrariness and favoritism” violates freedom of expression.<sup>80</sup> Governments in countries with high freedom of expression rankings take care to not unduly exert editorial influence on the broadcast media they regulate.

## 2. *Criticism of ruler and other public officials*

With the exception of Saudi Arabia, the laws of the GCC countries prohibit criticizing their rulers. Article 214 of the Bahrain penal code promises a prison sentence for anyone “who offends the emir of the country, the national flag or emblem.”<sup>81</sup> Article 20 of Kuwait’s media law states that “no challenge may be made to the person of the emir of the state of Kuwait by criticism.”<sup>82</sup> And Article 70 of the UAE’s press law offers an expansive protection: “No criticism shall be made against the Head of State or Rulers of the Emirates.”<sup>83</sup> These charges can lead to both fines and prison sentences.

Perhaps the most restrictive ban on criticism of rulers can be found in the UAE Cybercrime Law. Article 29, updated in 2012, criminalizes publication of:

[I]nformation, news, statements or rumors on a website or any computer network or information technology means with intent to make sarcasm or damage the reputation, prestige or stature of the State or any of its institutions or its president, vice-president, any of the rulers of the Emirates, their crown princes, or the deputy

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79. *Licensing of media workers*, ARTICLE 19 (2013) (alteration in original), <http://www.article19.org/pages/en/licensing-of-media-workers.html>.

80. Keller, *supra* note 60, at 199.

81. Bahrain: Press and Publication Law, DECREE BY LAW NO (47) (2002).

82. Kuwait: Press and Publications Law, *supra* note 44.

83. UAE: Press and Publications Act, *supra* note 57.

rulers of the Emirates, the State flag, the national peace, its logo, national anthem or any of its symbols.<sup>84</sup>

Violators of this law may be imprisoned for an unspecified length of time and fined up to 1 million dirhams (\$270,000). The law applies to anyone—journalist or resident—uttering any speech via digital communication.

These blanket bans on offending or criticizing the ruler constitute *lèse-majesté* laws, French for “injured king.” Jurisdictions with strong protections for press freedom rarely enforce such statutes, and courts have increasingly thrown out insult convictions because they undermine free speech.

In 2013, the European Court of Human Rights overturned the conviction of a French man who had been charged with insulting President Nicolas Sarkozy while holding an offensive sign. The court ruled that the 30-euro penalty was disproportionate and violated Article 10 of the European Convention on Human Rights, which holds that governments may not infringe freedom of expression. The European court also noted that penalties for insulting leaders would likely have a chilling effect on satirical contributions during discussions of public interest.<sup>85</sup> French law was amended later that year to drop the insult legislation.<sup>86</sup> Of course, the French case involved a man who was simply holding an offensive sign. GCC laws allow for the arrest of citizens engaged in criticism or other dissent.

Some GCC countries also prohibit insulting public officials. For instance, Article 21 of the Kuwait media law makes it illegal to “disdain or insult” judges or public prosecutors.<sup>87</sup> In Oman, Article 173 of the penal code criminalizes “affronts to public officials” which has been used to charge journalists with insults. Two journalists in Oman were charged with “insulting the judiciary” after a report alleging corruption in the court system in 2011.<sup>88</sup> They lost the case and its appeal and were sentenced to five months in jail.<sup>89</sup>

General criticism of rulers, leaders, and public officials has historically received far more protection than simple insults or offense. In addition to not

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84. UAE: Cybercrime Law, *supra* note 42.

85. Robert Myles, *Mocking Sarkozy Not a Crime, Says European Court of Human Rights*, DIGITAL JOURNAL (Mar. 15, 2013), <http://www.digitaljournal.com/article/345728>.

86. Angélique Chrisafis, *Insulting the French President No Longer a Criminal Offence*, THE GUARDIAN (Jul. 25, 2013), *available at* <http://www.theguardian.com/world/2013/jul/25/insulting-french-president-criminal-offence>.

87. Kuwait: Press and Publications Law, *supra* note 44.

88. Undercover Dragon, *Minister of Justice presses charges against Omani newspaper for “insulting him and the Ministry”*. *Courts order shutdown and jail 2 journalists*, MUSCAT CONFIDENTIAL (Sep. 27, 2011), <http://muscatconfidential.blogspot.com/2011/09/minister-of-justice-presses-charges.html>.

89. *See* articles *supra* note 48.

banning speech that is critical of leaders, many courts and legislatures have made it difficult for any public figures to easily win libel cases.<sup>90</sup> Of course, these jurisdictions also tend to be democracies in which robust criticism of leaders is seen as a necessary part of the democratic process. Many European countries—particularly those that have evolved into constitutional monarchies—tend to avoid enforcing *lèse-majesté* laws.<sup>91</sup>

Several GCC countries have charged journalists and social media activists with insulting the rulers or public officials. For instance, Kuwait charged a journalist at an online news site with posting tweets on Twitter that were offensive to the country's emir.<sup>92</sup> No other details were released about the charges except that the journalist received a two-year prison sentence. The Kuwaiti government recently arrested and sentenced a dozen other activists for their tweets including several former members of the Kuwaiti parliament.<sup>93</sup> Bahrain, Qatar, Oman, and the United Arab Emirates have all used insult laws against activists engaged in critical speech in their countries.<sup>94</sup> While these actions were directed at social media activists—as opposed to journalists—it is important to note that social media is one of the few, if not the only, source for unfiltered news since the newspapers all practice extreme self-censorship.

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90. See text accompanying “Defamation” Section, *infra*.

91. NICHOLAS GROSSMAN & DOMINIC FAULDER, KING BHUMIBOL ADULYADEJ 307 (2012).

92. *Kuwaiti Journalist Jailed for Twitter “Insults,”* YAHOO NEWS (Jan. 7, 2013), <http://news.yahoo.com/kuwaiti-journalist-jailed-twitter-insults-145947816.html>.

93. *Kuwaiti Opposition Tweeter Jailed for Emir Insult,* THE DAILY STAR NEWSPAPER (Mar. 31, 2013), available at <http://www.dailystar.com.lb/News/Middle-East/2013/Mar-31/212080-kuwaiti-opposition-tweeter-jailed-for-emir-insult.ashx>.

94. See, e.g., Simeon Kerr, “Qatari Poet Jailed for ‘insulting Emir,’” FINANCIAL TIMES (Nov. 29, 2012), available at <http://www.ft.com/intl/cms/s/0/41246042-3a2f-11e2-a00d-00144feabdc0.html#axzz2OIgW7Z3m>; “Insulting the Sultan in Oman,” *Foreign Policy Blogs* (Oct. 19, 2012),

[http://mideast.foreignpolicy.com/posts/2012/10/19/insulting\\_the\\_sultan\\_in\\_oman](http://mideast.foreignpolicy.com/posts/2012/10/19/insulting_the_sultan_in_oman) (last visited

Mar. 24, 2013); “Kuwait Arrests 3 Former MPs for Emir Insults,” YAHOO NEWS (Feb. 5, 2013), <http://news.yahoo.com/kuwait-arrests-3-former-mps-emir-insults-113211526.html>;

*UAE: End “travesty of Justice” for Five Convicted over President Insults,* AMNESTY INTERNATIONAL (Nov. 27, 2011); *Bahrain Charges Four Men with Insulting King,* THE GUARDIAN (Oct. 18, 2012), available at

<http://www.guardian.co.uk/world/2012/oct/18/bahrain-charges-men-insulting-king>; *Insulting the Sultan in Oman,* FOREIGN POLICY BLOGS (Oct. 19, 2012),

[http://mideast.foreignpolicy.com/posts/2012/10/19/insulting\\_the\\_sultan\\_in\\_oman](http://mideast.foreignpolicy.com/posts/2012/10/19/insulting_the_sultan_in_oman); *Kuwait Arrests 3 Former MPs for Emir Insults,* YAHOO NEWS (Feb. 5, 2013),

<http://news.yahoo.com/kuwait-arrests-3-former-mps-emir-insults-113211526.html>; Simeon Kerr, *Qatari Poet Jailed for “insulting Emir,”* FINANCIAL TIMES (Nov. 29, 2012), available at <http://www.ft.com/intl/cms/s/0/41246042-3a2f-11e2-a00d-00144feabdc0.html#axzz2OIgW7Z3m>.



### 3. *Ban on material that can harm the economy*

All the GCC laws include language that prohibits distributing information that would harm the national economy. For instance, Article 9 of Kuwait's press law prohibits any publication that injures "the economic or health situation in the country."<sup>95</sup> Article 47 of Qatar's press law prohibits any journalism that would do "damage to the national currency or cause confusion of ideas as regard to the economic situation."<sup>96</sup> Such laws could lead to self-censorship by journalists. For instance, a reporter simply reporting on a product defect in a well-known public company could potentially cause sales to drop, thereby harming the national economy and leading to charges the journalist would rather avoid. Legal cases in which these types of laws have been struck down are hard to find because they are quite rare. In a 2001 case in Peru, the government brought "false news" charges a radio station for allegedly disseminating false statements that led to a financial panic. The Peruvian Constitutional Tribunal refused to uphold a conviction, ruling that doing so would breach the station's rights. However, the court noted that defamation charges (from a bank that filed the criminal charges) could be pursued and damages collected if the statements were deemed to be false.<sup>97</sup>

### 4. *Truth in reporting*

Every GCC country except Qatar contains at least one clause in their laws that in some way mandates journalists ensure their reports are "true." For instance, Article 248 of Bahrain's penal code makes it a crime to issue a "false report" on a public hearing.<sup>98</sup> Article 9 of Saudi's media law requires that journalists "observe objective and constructive criticism that aims at public interest and which is based on facts and evidence."<sup>99</sup> (The emphasis on "facts" and "evidence" implies truth in reporting.) Article 38 of the UAE's Cybercrime Law criminalizes spreading through electronic means "any incorrect, inaccurate or misleading information which may damage the interests of the State or injure its reputation, prestige or stature."<sup>100</sup> Article 17 of Kuwait's media law directs the editors of newspapers to "search for accuracy and truth" in their reports.<sup>101</sup> And Article 135 of Oman's penal code bans "fake facts or untrue allegations" that lead

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95. Kuwait: Press and Publications Law, *supra* note 44.

96. Qatar Prints and Publication Law, *supra* note 63.

97. BUCKLEY ET AL., *supra* note 34, at 137.

98. Bahrain Penal Code, *supra* note 41.

99. Saudi Arabia: Law of Printing and Publication, *supra* note 55.

100. UAE: Cybercrime Law, *supra* note 42.

101. Kuwait: Press and Publications Law, *supra* note 44.

to devaluation of the national currency or shake trust in the state's financial status.<sup>102</sup> Violating these provisions can lead to fines or jail sentences.

While a requirement that news outlets only report the truth and avoid falsehoods seems sensible, many countries have done away with such legislation because of trouble enforcing such a rule while allowing for a free and independent press. The truth can be a contested matter, and prohibitions on publishing false news can be abused in attempts to suppress undesirable allegations, regardless of their validity. Furthermore, truth as a mandate is compromised by the journalistic technique of attribution. Good journalists attribute their facts to sources, but mandating "truth" would force journalists to vouch for the veracity of every one of their sources. In practice, the mandate for journalists to always report "the truth" is simply outside the realm of possibility.<sup>103</sup>

Many international courts and legislatures have recognized the need to protect false news in order to guarantee freely functioning press systems. For instance, in 1997 the Ugandan government charged and convicted journalists with disseminating false news after they published an allegation that the president had received a bribe. In 2000, the Ugandan Supreme Court struck down the criminal conviction. The justices noted that the legislation was incompatible with free speech guarantees:

"False" is a word without any definite meaning. As already discussed above, a statement may be said to be false merely because it is an unpopular view or a minority view. To make such a statement punishable with heavy criminal sanctions is an intolerance that goes beyond what is acceptable and demonstrably justifiable in a free and democratic society.<sup>104</sup>

Most countries with strong media freedoms do not enforce laws that attempt to criminalize the publication of "false news."<sup>105</sup>

Charges over "false news" dissemination have been seen in the UAE, Kuwait, Bahrain and Saudi Arabia. In recent cases, social media activists tend to be the target since newspapers practice such widespread self-censorship. In 2013, the UAE arrested an activist on false news charges for tweeting details of a mass trial of other Emiratis accused of sedition. His tweets had become a divergent

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102. Omani Penal Code, *supra* note 50.

103. BUCKLEY ET AL., *supra* note 34, at 137.

104. Charles Onyango Obbo and Another v. Attorney General 37 (Supr. Ct. of Uganda 2000).

105. One notable exception would be European laws that ban speech denying the Holocaust. Some observers have pointed out that such laws are hard to justify given other universal arguments in favor of free speech.

source of news since the local press tended to offer one-sided accounts of the proceedings and international media outlets were barred from the trial. The tweets noted that defendants complained they were not allowed to meet with their lawyers or hear any of the prosecutors' case in advance. The local press ignored these details and never attempted to explain or understand the defendants' legal position.<sup>106</sup> In Bahrain, a human rights representative was accused of "spreading false news" for taking pictures of an injured protester in late 2012. Prosecutors had reportedly claimed that publishing the picture (which apparently erroneously implied that the security forces caused the injury) resulted in "protests and acts of sabotage that disrupted security and order on the same day."<sup>107</sup> He was later acquitted of the charges after spending two months in jail awaiting bail. These cases and others illustrate that some GCC countries use false news laws to combat digital forms of journalism that circumvent the normal state control of the media.

#### *5. Other broad prohibitions*

All the GCC media laws feature broad prohibitions on a wide range of issues that also conflict with fundamental freedoms of the press; Table 3 lists these restrictions.

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106. Matt Duffy, *UAE Arrests Activist For "False News" Tweets*, AL MONITOR (Mar. 27, 2013), <http://www.al-monitor.com/pulse/originals/2013/03/twitter-arrest-uae-social-media-law-trial.html>.

107. *Bahrain Court Acquits BCHR Vice President from "Spreading False News" Accusation*, ISLAM TIMES (Mar. 11, 2013), <http://www.islamtimes.org/vdcgq39xtak9tz4.5jra.html>.

Table 3: Broad prohibitions in GCC media laws

| <i>Country</i> | <i>Article Number</i> | <i>Restrictions</i>  |
|----------------|-----------------------|--|
| Bahrain        | Article 70, Section A | (Press may not find) fault against the right of a king or a president of an Arab or Islamic state or any other state which the Kingdom of Bahrain has mutual diplomatic representation.  |
|                | Article 71, Section B | (Press may not) disdain or degrade against any legislative council or courts or other formal authorities.  |
| Kuwait         | Article 21, Section 9 | (Press may not cause) harm to the relationships between Kuwait and other Arab or friendly countries . . .  |
| Oman           | Article 32            | It is forbidden to publish any news, articles, photos, or documents prohibited by the Minister of Information until authorization is given by the same source.   |
| Qatar          | Article 47, Section L | (Press may not publish) news of bankruptcy of traders or commercial shops or banks, or exchangers, unless a competent court permits so.  |
| Saudi Arabia   | Article 9             | (Publications) shall observe objective and constructive criticism that aims at public interest and which is based on facts and evidence.   |
| UAE            | Article 76            | No article blemishing the president of an Arab, Islamic, or any other friendly state will be published. It is also prohibited to publish any material that causes agitation to relations between the UAE and other Arab, Islamic and friendly countries. |
|                | Article 77            | No article defaming Arabs and their civilization and heritage shall be published.  |

An examination of the restrictions listed in Table 3 finds that they are overly broad and do not align with international principles that see a public benefit in robust reporting. For instance, a journalist reporting on the corruption or dysfunction at a local courthouse could easily violate the Bahraini prohibition on “degrading” a judge. Reporters writing about the 2011 revolts in North Africa technically violated the laws that ban defaming or harming relations with Arab countries.<sup>108</sup> Bans on reporting bankruptcies and other business dealings appear to limit citizens’ right to know information that may affect them. And Saudi Arabia’s ban on criticism that is not “constructive” appears to be an overly broad restriction that could lead to self-censorship by journalists.

Overly broad restrictions on the press tend to be one of the core objections of independent judiciaries. In U.S. courts, the “overbreadth doctrine” is primarily focused on challenges to laws under the First Amendment. American courts will generally overturn a statute if in trying to limit unprotected speech (e.g., obscenity or defamation), it also limits protected speech. Because an overly broad law could deter constitutionally protected speech, the courts will throw out the entire legislation. Lawmakers, of course, are free to create more specific legislation that focuses narrowly on speech not protected by the First Amendment.<sup>109</sup>

## VI. REVIEW AND RECCOMENDATIONS

The review and analysis of these media laws and other regulations offer many suggestions for aligning regional legislation to globally accepted approaches. Of course, any discussion about reforming GCC media laws will be fraught with cultural considerations. For instance, Arab cultures tend to put more emphasis on the importance of reputation than some other parts of the world. Arab cultural sensitivities may also bristle at the idea that private figures may have their reputation injured legally if the information is true. Discussion of changing defamation laws, therefore, will face resistance from the cultural norms surrounding these issues. Any reformation would want to take these considerations into account when attempting to make changes to the law. Gradual changes may be preferable to drastic reforms.

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108. Many of the news outlets in the GCC have covered the Syrian uprising closely, meticulously documenting President Bashar Assad’s abuses. Some outlets—notably Qatar’s Al Jazeera news network—have even been accused of systemic bias against the Syrian government. Syria is allied with its Shiite neighbor Iran, a historic foe of the Sunni Gulf monarchies. Therefore, geopolitics may best explain the lack of journalistic restraint despite laws that officially ban defaming an Arab head of state.

109. Martin H. Redish, *The Warren Court, the Burger Court and the First Amendment Overbreadth Doctrine*, 78 NW. UL REV. 1031 (1983).

In areas where international norms agree with limits placed upon journalism—defamation, public order and public morals—GCC lawmakers or policymakers may want to consider adapting their current legislation to more fully protect freedom of the press. One should stress that these approaches are not simply based on U.S. or European legal systems but are generally agreed upon “best practices” throughout the world. The 2014 Reporters Without Borders press freedom ranking showed countries such as Jamaica (17), Costa Rica (21), Namibia (22), Cape Verde (24), Uruguay (26), Ghana (27), and Belize (29) at the top of the list.<sup>110</sup> The high rankings are due in part to their legal systems’ protections for journalists and free speech. By modifying statutes in the GCC countries, journalism would improve and rankings would rise.

Defamation laws, foremost, should be decriminalized so that charges of libel will not result in police visits and prison time. Laws should also be modified so that truth is a clear defense for defamation and public figures receive less protection than private figures, thereby encouraging more criticism and debate of public issues. Importantly, these defamation laws should be part of civil law, not the penal code. Any discussion of media reform must involve both penal code and media law revision. The current legal environment creates a disincentive for journalists to engage in critical journalism where wrongdoing may be exposed. Journalists worried about going to jail after documenting corruption will simply not engage in critical reporting. The current system also allows figures to protect reputations they do not necessarily deserve.

Public order laws could be rewritten to ensure they are not too broad and used to stifle legitimate reporting. International courts generally only limit speech on public order grounds if it calls for “imminent lawless action” or “incitement to hatred.” Authorities can abuse any legislation that vaguely calls for journalists to not upset public order. A journalist operating under such laws could never know when reporting may run afoul of such laws. Governments may also use public order legislation to simply punish journalism that is considered biased or embarrassing. Narrowly tailored public order laws would encourage journalists to engage in critical reporting.

The issue of public morals is best avoided in this discussion of laws affecting journalism since countries vary greatly on acceptable standards or public morality and such laws rarely restrict reporting and editing. However, some GCC countries have used public moral laws to squelch legitimate debate over issues such as religion. One should also note that the United Nations has warned against public morals legislation that draws from one dominant religion. The GCC countries are ruled by Sunni Muslims.

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110. *Press Freedom Index*, REPORTERS WITHOUT BORDERS (Feb. 2014).

This analysis also finds that GCC countries invoke many restrictions on the press that extend beyond internationally accepted practices as defined by the ICCPR. Restrictions on insulting or criticizing rulers or other public officials tend to create a broad limit on public discussion and debate. Most countries with protections for free expression have either eliminated insult laws or simply do not enforce them. In Kuwait, observers noted in 2014 that the recent arrest and conviction of at least 18 activists and journalists on insult charges has limited freedom of expression in the country.<sup>111</sup> The GCC countries should remove broad language limiting journalism on public order grounds and replace it with narrower language banning calls for “imminent lawless action” or “incitement to hatred.”

Prohibitions on reporting that could “harm the economy” are far too broad to allow for critical and robust journalism. To operate independently, journalists must have the freedom to report on all issues that affect the public interest. Reports detailing a drop in sales or corruption in a large firm could potentially have a detrimental impact on the economy. But journalists should not have to worry about possible charges based on the results of their legitimate reporting. Countries that rank high in press freedom do not have these types of laws on the books.

While outlawing “false news” may seem like a good policy, in practice such laws are regularly used to quash reporting unfavorable to government officials. Truth can be subjective, so media regulations should encourage as much dissemination as possible to allow for the best obtainable version of the truth to emerge. Courts in countries as varied as Peru and Uganda have thrown out prosecutions based on false news laws. In these and other jurisdictions, courts have recognized that false news laws give the government too much power to restrict legitimate journalism. Of course, civil defamation cases—which often hinge on whether the injurious information was truthful—will always have a place in media regulation.

Finally, GCC and Arab media regulators should avoid any overly broad legislation. Expansive directives about not defaming an Arab state or damaging the nation’s stature could easily lead journalists to avoid good, critical journalism amid a worry about overstepping nebulous boundaries. Countries with protections for press freedom do not have laws that create large swaths of prohibited coverage. The result of such laws can only be self-censorship, with journalists avoiding reports on information that could be interpreted to violate these wide prohibitions.

The analysis in this article shows that GCC media laws create an extremely restrictive environment for journalism. Examination of media legislation in other Arab countries shows this regulatory environment generally

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111. *Kuwait: Jail, Exile for Insulting Emir*, HUMAN RIGHTS WATCH (Jan. 26, 2014).

exists throughout the region. Given this landscape, it is unsurprising that censorship by both government and private media topped the list of many complaints brought by activists during the Arab Spring. Indeed, no Arab country receives a ranking of “free” on the Freedom House press freedom rankings and most receive completely “not free” rankings. In the 2013 index, only Tunisia, Lebanon, Kuwait, and Libya received “partly free” rankings. Of those four “partly free” Arab countries, two of them—Libya and Tunisia—are post-revolutionary nations with fragile but growing democratic systems. Perhaps one variable in this discussion is the degree to which some Arab countries would ever consider creating media regulations that encourage more robust journalism and freedom of speech.

As GCC and other Arab countries struggle with new technologies that are rapidly changing media landscapes, government policymakers, academics, and media professionals require research into communication law and regulation to form a basis for the new paradigms. This analysis—while limited in many respects due to its broad but shallow focus—is meant to promote more academic studies in the region. The normative aspects of this review offer examples of international regulation approaches to these common issues. This perspective aims to provide practical guidance for an audience unfamiliar with the approaches taken by countries where freedom of the press is more entrenched.