

Title: Comparative normative framework:

Laws and jurisprudence on Defamation, Libel, Slander and Sedition

Main Data Sources:

- General comment No. 34 on Article 19: Freedoms of opinion and expression¹
- Doctrine: Principles on Freedom of Expression and Protection of Reputation²
- International Press Institute (IPI), Report: Out of Balance'(Jan. 2015)³;
- International press Institute Database⁴

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Summary: Insult on the person of the President of the Republic, public insult and defamation are considered in many countries as mere '*délits de presse*'; essentially civil matters that, while they carry a financial compensation, they are subjected to the media regulator for disciplinary action.⁵

In Africa, the High Court of Kenya has just stricken down the crime of defamation, declaring [about the penal code] that 'the prospect of criminal proceedings and a jail term of up to 2 years for defamation is unnecessary, excessive and unjustifiable in an open and democratic society, and [...] creates a disproportionate limit on freedom of expression.' In South Africa while defamation is gazetted as a crime, the constitutional jurisprudence has advanced towards decriminalizing. In either country there were no special provisions protecting the head of state against defamation.

In Europe and America however, occasional convictions of journalists continue to take place in states typically considered strong defenders of media freedom and freedom of expression such as Denmark, Germany, Switzerland and Canada. Defamation laws in those countries are said to be contradictory with their declared democratic pillars of public scrutiny and accountability. Available international jurisprudence concur that such laws should not be and that Heads of States should be more, not less, tolerant of criticism than private persons.

Rwandan positive Law: Notwithstanding legislation on defamation, *inter alia*, on the basis of sex [...]⁶, extortion⁷ and slander of foreign dignitaries⁸, defamation in public is punishable by a maximum sentence of one year and/or five million Rwandan Francs⁹. On the other hand, Sedition using violence, *inter alia*, on the President of the Republic, carries a life imprisonment sentence.¹⁰

¹ Human Rights Committee 102nd session Geneva, 11-29 July 2011 General comment No. 34 Article 19: Freedoms of opinion and expression

² ARTICLE 19, '*Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*', 2000, <http://bit.ly/2cY9MON>

³ <http://legaldb.freemedia.at/wp-content/uploads/2015/08/IPI-OutofBalance-Final-Jan2015.pdf>

⁴ <https://ipi.media/>

⁵ Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard), Modifié par la Loi n°2004-669 du 9 juillet 2004 - art. 109 (V) JORF 10 juillet 2004 en vigueur le 1er août 2004

⁶ Art. 276, Organic Law N° 01/2012/OL of 02/05/2012, instituting the Penal Code

⁷ (n6 above) Art. 317

⁸ (n6 above) Art. 483

⁹ (n6 above) Article 288

¹⁰ (n6 above) Article 461

Part I: Western Countries

1.1. Criminalization of defamation conducts in general, on the Head of State and other public officials

Europe: As a general rule, criminal penalties for defaming/insulting heads of states are higher than criminal penalties for insulting private persons. However, defamation laws protecting heads of state are subject to the same scrutiny and principles as defamation laws protecting public officials more broadly.

One exception to this rule is Greece, where the maximum penalty for insulting or defaming the president (three months) is less than the maximum penalty for general defamation. However, the Greek Constitution (Art. 14(3b)) also allows for the seizure of material (both pre-and post-publication) that contains insults to the president

Criminalization of defamation in European countries can be classified in three regional and political areas. In Southern Europe (Greece, Italy, Portugal and Turkey), Central Europe (especially Hungary), Central Asia and Azerbaijan. Nine Western States sanction defamation more harshly if the victim is a public official. Nearly all of these states are located in Western Europe. Another 15 states provide for criminal liability for various forms of insult against public officials, usually in connection with the exercise of official function.

Penalties for these acts are frequently much more severe than for general defamation and insult, especially in Western and Northern European monarchies and in Central Asia. Turkey stands out for the extraordinary use of criminal law to punish criticism of the President by journalists and average citizens.

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Country	General Provision	Provision related to the head of State
Azerbaijan	Libel penalized with up to three years in prison (Criminal Code Art. 147)	Discrediting or humiliating the honor and dignity of the head of state penalized with up to five years in prison (Criminal Code Art. 323)
Belarus	Libel penalized with up to three years in prison (Criminal Code Art. 188)	Libel penalized with up to three years in prison (CRIMINAL CODE 188)
Iceland	Defamation and slander penalized with one and two years in prison, respectively (Criminal Code Arts. 235- 236)	Penalties for defamation and slander can be doubled if the victim is the president (Criminal Code Art. 101)
Poland	Defamation and insult penalized with up to one year in prison (Criminal Code Arts. 212, 216)	Publicly insulting the president penalized with up to three years in prison (Criminal Code Art. 135(2))
San Marino	Aggravated defamation penalized with up to imprisonment of the first degree (Criminal Code Art. 185)	Offence to the Captains Regent penalized with up to imprisonment of the third degree (Criminal Code Art. 342)

The United States also, has no criminal defamation laws at the federal level, but such laws continue to exist at the state level. Which means a decision on defamation at state level can be stricken down at federal level, hence the rarity.

1.1.1 Legal Systems and defamation

All Western European countries are civil law countries except for Ireland and England which have a common-law system. Scotland and Malta have a mixed system. Virtually all the Western European countries with civil law system retain criminal defamation provisions. There are exceptions; Norway, a civil law system

*In November 2015, Italian journalists **Emiliano Fittipaldi** and **Gianluigi Nuzzi** who Authored two books 'Avarice' and 'Merchants in the temple' respectively, exposing corruption in the catholic church, were prosecuted by the Vatican, facing eight years of prison, in what the press called an 'Inquisition in the 21st century'. They were later pardoned by the Pope.*

retains criminal defamation laws. The UK, Ireland and Cyprus, which are common-law systems, no longer have criminal defamation. In Italy and Greece, as recent report by the groups *Ossigeno per l'Informazione* (for Italy)¹¹ and *the International Press Institute* (for Greece)¹² show that both states continue to sentence journalists to prison for defamation, *albeit* sentences which are converted into criminal fines. As a result, the European Court of Human Rights (ECtHR) has ruled in cases involving both countries that the imposition of (suspended) prison sentences for defamation constitutes a violation of Art. 10 of the European Convention on Human Rights¹³.

1.1.2 Prison sentences for defamation:

Countries from former Soviet Union or the former Yugoslavia still criminalize defamation and nearly all foresee the possibility of prison sentences going up to two years. Germany, based on its history, punishes slander committed through the media with up to five years in prison.¹⁴ The states that do not provide for imprisonment are: Albania, Bulgaria, Croatia, France, the Russian Federation and Serbia.

1.1.3 Defamation and insult

In terms of the objective components, the criminal codes of many Western states differentiate between defamation consisting of the accusation of a particular fact and insult consisting of offensive expression.

For countries retaining criminal defamation provisions, the laws do not (explicitly) require the impugned content to be false. However that may constitutes aggravated defamation

Accordingly, two separate provisions on 'defamation' and 'insult' are frequently provided (e.g., Belarus, Bulgaria and France). A number of states expand this basic structure to include a third offence that covers defamation in which the speaker knows the fact to be false (e.g., Germany, Greece, and Switzerland).

Denmark: Attacking a public servant with insult, abusive language or other offensive words or gestures in the course of official duties (Criminal Code Art. 121) Poland: Insulting a public official or a person called upon to assist him in the course of or in connection with the performance of official duties (Criminal Code

¹¹ See "Shut Up or I'll Sue You!", Dossier produced by Ossigeno per l'Informazione, October 2016, http://notiziario.ossigeno.info/wp-content/uploads/2016/10/DOSSIER_Shut-up-or-I%E2%80%99ll-sue-you.pdf.

¹² See, e.g., <https://ipi.media/in-greece-judges-poor-application-of-european-libel-law-seen-as-obstacle/>.

¹³ See *Affaire Belpietro c. Italie*, no. 43612/10 (2013) and *Affaire Mika c. Grèce*, no. 10347/10 (2013).

¹⁴ (n13 above)

Art. 226(1)) Russian Federation: Public insult of a representative of the authority during the discharge of official duties (Criminal Code Art. 319)

San Marino: Offending the honor or dignity of a public official in the official’s presence or direct communication with him, in relation to official function (Criminal Code Art. 382)

Country	Nature of increased penalty if victim is public official
Andorra	Penalty for Defamation increased from one year to two years (Criminal Code Art. 173)
Bulgaria	Increased fine for insult and slander (criminal Code Art. 148)
France	Increased fine for insult (Lib. Presse Art 32)
Germany	Increased prison terms and higher minimum prison term for defamation and slander (criminal Code Art. 188)
Italy	Increased prison terms and fines as ‘aggravated’ defamation (criminal Code Art. 595)
Monaco	Increased prison terms for defamation and insult (PFE 23, 25)
Netherlands	Maximum prison term for defamation. Libel, intentional libel, insult increased by one-third (Criminal Code Art. 267)
Portugal	Minimum and Maximum penalties for defamation and insult raised by one-half (Criminal Code Art. 184)
Turkey	Minimum Penalty of one year in Prison (Criminal Code Art. 3)

1.1.4 Aggravated cases of defamation:

The Canadian Criminal Code foresees up to five years in prison for defamatory libel known to be false. In Portugal, those convicted of the offence of ‘false accusation’ also face up to eight years in prison¹⁵. In Slovakia, defamation that causes ‘large-scale damage’ (e.g. loss of employment or divorce) offenders face up to eight years behind bars. The Czech Republic, Finland and Latvia specifically require that only false information can lead to criminal liability.

Germany punishes slander committed through the media with up to five years in prison while Canadian Criminal Code foresees up to five years in prison for defamatory libel known to be false.

The Spanish Criminal Code defines the offence of ‘injuria’ as any accusation, expression or action that harms the dignity of another person, detracting from his reputation or attacking his self-esteem”. In the Netherlands, a persons convicted of aggravated defamation may lose the right to hold political office or serve in the armed forces.

1.2. Defamation Jurisprudence:

There is widespread agreement among courts, international standard-setting bodies, and CSOs that defamation laws should reflect the concept that public officials must be more, not less, tolerant of criticism than private persons.

Laws against defamation in general and on the head of state in particular, are seen as problematic, especially in established Western European democracies that defend media freedom in bilateral and multilateral global fora as well as, in several cases, through significant funding to pro-free expression NGOs, while criminalizing defamation domestically. The European Court of Human Rights has

¹⁵ See: Portuguese Criminal Code Art. 365

made many decisions against Portugal for violating the right to freedom of expression in criminal defamation cases involving journalists.

In *Otegi Mondragon v. Spain*, the ECtHR ruled:

‘A state’s interest in protecting the head of state ‘cannot justify conferring on him or her a privilege or special protection vis-à-vis the right to report and express opinions about him or her. To think otherwise would be to depart from today’s political practice and conception’¹⁶

Notably, the ECtHR has also suggested that principles related to criticism of heads of state apply not only to republican heads of state but also to non-elected monarchs. In a 2011 decision, the Court held in a case involving Spain¹⁷:

“... the fact that the King occupies a neutral position in political debate and acts as an arbitrator and a symbol of State unity should not shield him from all criticism in the exercise of his official duties or - as in the instant case - in his capacity as representative of the State which he symbolizes, in particular from persons who challenge in a legitimate manner the constitutional structures of the State, including the monarchy [...] the fact that the King is ‘not liable’ under the Spanish Constitution, particularly with regard to criminal law, should not in itself [be regarded] as a bar to free debate concerning possible institutional or even symbolic responsibility on his part in his position at the helm of the State, subject to respect for his personal reputation.”

The United Nations Human Rights Committee on Freedoms of opinion and expression, in General Comment No. 34 on Article 19, expressed ‘concern regarding laws on such matters as, *lèse-majesté* and defamation of the head of state¹⁸

In the view of the UN Human Rights Committee¹⁹: ‘[I]n circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant.’

The European Court of Human Rights (ECtHR) in its landmark 1986 judgment *Lingens v. Austria*²⁰ stated: The ‘limits of acceptable criticism are wider as regards public or political figures than as regards a private individual. In a democratic society, the government’s actions must be subject to the close scrutiny not only of the legislative authorities but also of the press and public opinion’

‘[Expressed] Concern regarding laws on such matters as [...] disrespect for flags and symbols’. It has stated that ‘States parties should not prohibit criticism of institutions, such as the army or the administration’ and that it “deplores the existence of the offence of ‘defamation of the State’”

The African Commission on Human and Peoples’ Rights (ACHPR), European and UN Human Rights systems have jointly opined²¹:

¹⁶ Artun and Güvener v. Turkey, no 75510/01 [2007].

¹⁷ Otegi Mondragon v. Spain, no. 2034/07 [2011].

¹⁸ General Comment 34, para 38.

¹⁹ General comment no. 34, para 38

²⁰ In *Lingens v. Austria*, no. 9815/82 (1986).

²¹ Joint Declaration about Censorship by Killing and Defamation (2000). The Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights has joined more recent, similar statements.

“Defamation laws should reflect, *inter alia*, the principle that public figures are required to accept a greater degree of criticism than private citizens; in particular, laws which provide special protection for public figures, should be repealed.’

‘The Parliamentary Assembly of the Council of Europe’²² view is that states should ‘remove from their defamation legislation any increased protection for public figures’”

1.3. Seditious

More extreme incarceration terms can be observed in the offence of **seditious** libel: Up to 14 years in Canada; life sentence in Turkmenistan under a 2003 regulatory act on attempting to seed doubts on the president’s internal and external policies. **In Turkmenistan the seditious law is now in desuetude.**

The laws on Seditious and rebellion are critical to States which have been formed by bringing together peoples of various origins. This is the case of most continental Europe, notably France and Spain which maintain such laws to discourage attempts by regions to secede. According to Spanish law, rebellion charges may apply to those who ‘violently and publicly’ try to ‘abrogate, suspend or modify the Constitution, either totally or partially’ or ‘declare the independence of part of the national territory’. The crime of rebellion carries jail sentences of up to 30 years.²³

1.4. Country *lèse-majesté* laws

1. Turkey’s special case under President Recep Tayyip

Erdogan: In Turkey, the application of the country’s presidential insult law grew significantly under current President. Between August 2014 and March 2016 alone, 1,845 cases were reported to have been filed under this law, Art. 299 of the Turkish Criminal Code. This application has cast a wide net: those charged have included writers, politicians, athletes, students, academics and schoolchildren. In July 2016, the President announced a one-time withdrawal of charges filed under Art. 299, but reserved the right to bring cases in the future. Indeed, in December 2016, police arrested the cafeteria manager of the secular newspaper *Cumhuriyet* for reportedly saying he would refuse to serve tea to the President.

CATALONIA CASE

Following the unilateral secession of Catalonia, the Spanish Attorney General filed a lawsuit against Carles Puigdemont, its self-proclaimed president for crimes of, inter alia, rebellion and seditious.

According to Spanish law, rebellion charges may apply to those who ‘violently and publicly’ try to ‘abrogate, suspend or modify the Constitution, either totally or partially,” or “declare the independence of part of the national territory”.

The crime of rebellion carries jail sentences of up to 30 years. The case is still ongoing.

Between August 2014 and March 2016 alone, 1,845 cases were reported to have been filed under this law, Art. 299 of the Turkish Criminal Code.

²² (n21 above)

²³ Criminal Code of Spain (Organic Law 10/1995), as updated in 2015, available at: <http://bit.ly/1zu2ic6>

The Turkish Court approves: A court ruling upheld the constitutionality of Art. 299 in December 2016, ruling that ‘the said restriction [...] does not pose any obstacle to express ideas and thoughts as long as they do not harm others’ reputation or rights’.²⁴

- 2. Belgium²⁵:** Criminal defamation of the head of state: Offence toward the monarch and the royal family (lèse-majesté) remains a criminal offence in Belgium under Law of 6 April 1847 on Offence toward the King²⁶.

Art. 1 punishes insult toward the King by any means, including writings or images sold or distributed in public with imprisonment from six months to three years and a fine. Art. 2 punishes insult toward other members of the royal family with imprisonment from three months to two years and a fine. In addition, those convicted of lèse-majesté may be stripped of certain political rights according to the Belgian Criminal Code

- 3. Canada²⁷:** Criminal defamation of the head of state/head of government Seditious libel is an offence of the Criminal Code of Canada. Criminal Code Art. 59 defines seditious words as “words that express a seditious intention”; seditious libel as “a libel that expresses a seditious intention”; and seditious conspiracy as “an agreement between two or more parties to carry out a seditious intention”. Under Art. 59(4), “Without limiting the generality of the meaning of the expression ‘seditious intention’, every one shall be presumed to have a seditious intention who teaches or advocates, or publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada.” An exception is provided under Art. 60 as follows: “Notwithstanding subsection 59(4), no person shall be deemed to have a seditious intention by reason only that he intends, in good faith, to show that Her Majesty has been misled or mistaken in her measures; to point out errors or defects in the government or constitution of Canada or a province, Parliament or the legislature of a province, or the administration of justice in Canada; to procure, by lawful means, the alteration of any matter of government in Canada; or to point out, for the purpose of removal, matters that produce or tend to produce feelings of hostility and ill-will between different classes of persons in Canada.’

(4, 5 and 6) Croatia²⁸, Finland²⁹ and United Kingdom³⁰

- Criminal defamation of public officials: No provisions.
- Criminal defamation of the head of state/head of government: No provisions.
- Criminal defamation of foreign heads of state: No provisions.

- 7. Cyprus³¹:** Criminal defamation and insult laws No provisions. Criminal defamation was repealed in Cyprus in 2003 by Law 84(I)/2003. The following offences may be noted, although not strictly related

²⁴ Constitutional Court of the Republic of Turkey, Judgement No. 2016/186, 14.12.2016.

²⁵ Criminal Code of Belgium (Law of 8 June 1867), version as of 22 December 2016. Available at: <http://bit.ly/2jhb61l>

²⁶ Law of 6 April 1847 on Offences against the King, available at <http://bit.ly/2Au5DxV>

²⁷ Criminal Code of Canada (R.S.C., 1985, c. C-46), last amended on 17 June 2016, available at: <http://bit.ly/2nYCu85>

²⁸ Criminal Code of Croatia, version in force as of 30 May 2015, available at <http://zakon.hr/z/98/Kaznenizakon>.

²⁹ Criminal Code of Finland (19.12.1889/39), last amended by Law 42/2017, English translation <http://bit.ly/2hfp70S>.

³⁰ Coroners and Justice Act 2009, available at: <http://bit.ly/2yiSfuX>

³¹ Criminal Code of Cyprus, (KEF.154), last amendments 43(I)/2016, available at: <http://bit.ly/2zGyPVf>

to defamation: Public vilification: According to Art. 99 of the Criminal Code¹³⁵, publicly insulting another person so as to provoke an assault is a criminal offence punishable with imprisonment for up to one month or a fine.

8. **Denmark**³²: Criminal defamation of the head of state: The criminal penalties for defamation are doubled if committed against the Danish king or the head of government, according to Criminal Code Art. 115. Hence, offenders face up to four years in prison. If the victim the queen, the queen mother, or the heir to the throne, punishment is increased by 50 percent (which corresponds to up to three years in prison).

For most of European States with reigning monarchies the sentence for lèse-majesté ranges between four and six years (5 Years for the Netherlands). The only Exception is the United Kingdom which does not have lèse-majesté provisions

9. **Sweden**³³: Offence toward the monarch and the royal family (*lèse-majesté*) remains a criminal offence in Sweden under the Swedish Criminal Code. Defamation or insult committed against the King or other member of the Royal Family is a criminal offence under Ch. 18, Sec. 2 of the Criminal Code. The punishment is imprisonment for up to four years, or up to six years in the case of gross defamation.

10. **France**³⁴: France's Law of 29 July 1881 on the Freedom of the Press defines these behaviors as 'delicts'³⁵. **Criminal defamation of the head of state/head of government**: In 2013, France abolished Art. 26 of the Law of 29 July 1881 on the Freedom of the Press, which had criminalized offence toward the French president. However, it should be noted that, at the same time, the French president was added to the list of *public officials* receiving increased protection from defamation (see under 'Criminal defamation of public officials').

Criminal defamation of public officials: When criminal defamation is committed against public officials, the maximum fine increases to €45,000. The list of officials includes the French president, ministers, legislators, and ministers of religions subsidized by the state³⁶

11. **United States**³⁷: There are no criminal defamation laws³⁷ at the federal level, but some states retain criminal defamation law of some form, which are falling into desuetude; no specific law on defamation of head of state or public official.

12. **Germany**³⁸: Criminal defamation of public officials: defamation and/or Slander of a person involved in the popular political life, bears the same punishment as disparaging the German President, which ranges between three months to five years.

³² Criminal Code of Denmark, version as of 4 January 2017, available online at: <http://bit.ly/2zsyrvq>

³³ Criminal Code of Sweden (1962:700), last amended by 2016:677, available at: <http://bit.ly/2m4Qjos>

³⁴ Loi du 29 juillet 1881 sur la liberté de la presse, version as of 29 January 2017, <http://bit.ly/2gBilFR>

³⁵ Criminal Code of France, version as of 17 February 2017, <http://bit.ly/2ptWCBs>

³⁶ See: Law of 29 July 1881 on the Freedom of the Press Arts. 30-31.

³⁷ Wagner and Fargo, "Criminal Libel in the Land of the First Amendment, IPI, September 2015, <http://bit.ly/2At8c3l>

³⁸ See Arts. 90 and 188 of the German Criminal Code.

Part II: African Countries

2.1. Criminalization of defamation conducts in general, on the Head of State and other public officials:

In most of Africa defamation is still regarded as a crime and is effectively punished by prison sentence.³⁹ In 2010, the ACHPR called upon AU members 'to repeal criminal defamation laws or insult laws which impede freedom of speech'.⁴⁰ However, in *Konaté v. Bourkina-Faso* the African Court on Human and Peoples' Rights delivered a majority judgment, that criminal defamation is permissible but not punishable with imprisonment.⁴¹

- 1. South Africa⁴²:** Freedom of expression is provided for by Section 16 of the South African Constitution⁴³. However defamation continues to be a crime in South Africa⁴⁴. In *Khumalo and Others v Holomisa*⁴⁵, the South African Constitutional Court defines defamation as 'the wrongful and intentional publication of defamatory words or conduct that refers to another person. One famous case of the prevailing freedom of expression in South Africa is in *Zuma v. Goodman Gallery*, which ended in a settlement.⁴⁶ In *State v. Hoho*⁴⁷, the Bisho High Court convicted the appellant on 22 of 23 charges of criminal defamation and sentenced him to three years' imprisonment suspended for five years and, in addition, to three years correctional supervision. However plans for decriminalizing defamation are underway by the government and the ruling African National Congress (ANC).⁴⁸
- 2. Kenya: The Kenyan High Court has stricken down defamation laws.** In *Jacqueline Okuta & another v Attorney General & 2 others*, the Kenyan High Court declared Section 194 of the Penal Code, which creates the offence of criminal defamation, unconstitutional. The court found that 'the prospect of

Zuma v. Goodman Gallery.

On May 18, 2012, President Jacob Zuma and the ruling African National Congress (ANC) filed a joint complaint with the South Gauteng High Court of South Africa seeking an order to force the Goodman Gallery and City Press to remove a painting, titled 'The Spear' from the gallery and their website respectively. The painting, by Brett Murry which depicted the South African President with his genitals exposed. The painting had been displayed for eight days in the Gallery and five days on City Press' website, both claiming to operate within the ambit of section 16 of the South African Constitution, which recognizes the freedom of artistic creativity as a protected means of expressing one's opinion. The president was praying a court order based, not on his privileges as a head of State, but on his rights to dignity and privacy. Before a final decision was reached, the Goodman Gallery and City Press agreed to remove all displays of the portrait from the their gallery and online publications. Between the gallery and the painter, no one was prosecuted.

³⁹ <http://www.polity.org.za/article/when-will-defamation-be-decriminalised-2015-06-29>

⁴⁰ (n39 above)

⁴¹ <http://bit.ly/2m4F2Ey>

⁴² Criminal Law Amendment Act 105 of 27 November, 1997

⁴³ The Constitution of the Republic of South Africa, 1996

⁴⁴ Art. 242, Criminal Procedure Act 51 of 22nd July 1977, <http://www.justice.gov.za/legislation/acts/1977-051.pdf>

⁴⁵ *Khumalo v Holomisa* 2002 5 SA 401 (CC) para 18, (CCT53/01) [2002](14 June 2002)

⁴⁶ <http://bit.ly/2Avr8P2>

⁴⁷ *Hoho v. The State* (493/05) [2008] ZASCA 98 (17 September 2008)

⁴⁸ The Minister in the President's office is on record declaring that The ANC will be tabling a bill to decriminalize defamation in South Africa. <http://bit.ly/2iFfXeo>

criminal proceedings and a jail term of up to 2 years for defamation was unnecessary, excessive and unjustifiable in an open and democratic society, and the law creates a disproportionate limit on freedom of expression.’⁴⁹

Conclusion

This brief study demonstrates that while criminalization of defamation laws persists, with special provisions for the head of state, they are a legacy of old democracies and even older monarchies.

International law, international

jurisprudence and modern doctrine are unanimous on the removal of jail-term, special treatment for head of states, and ultimately on total decriminalization. The African continent led by the East African community seems at vantage point to lead the way, in decriminalizing defamation. As Rwanda ‘updates’ its penal code, this brief study aims to contribute to the ongoing conversation.

The High Court of Kenya ruled ‘the prospect of criminal proceedings and a jail term of up to 2 years for defamation [...] unnecessary, excessive and unjustifiable in an open and democratic society, and the law creates a disproportionate limit on freedom of expression.’

⁴⁹ In *Jacqueline Okuta & another v Attorney General & 2 others* [2017] eKLR, <http://bit.ly/2m6e6nS>