



# International Press Institute

## Final Report on the 2013 IPI Advocacy Mission to the Caribbean: Focus on Criminal Defamation



*In cooperation with:  
The Association of Caribbean MediaWorkers (ACM) and  
The Dominican Republic Association of Journalists (CDP)*

**Final Report on the 2013 IPI Advocacy Mission to the Caribbean:  
Focus on Criminal Defamation**

*14 April – 5 May 2013*

Antigua and Barbuda, Guyana, Suriname, Dominican Republic,  
Trinidad and Tobago, Curaçao

**The International Press Institute (IPI)** is the world's oldest organisation dedicated to promoting the right to information. We are a global network of journalists and editors working to safeguard freedom of the press and to promote the free circulation of news and information as well as ethics and professionalism in the practice of journalism. Based in Vienna, IPI is a global organisation with members in more than 120 countries. It is a politically neutral body and holds consultative status at the United Nations and the Council of Europe.



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**The Association of Caribbean MediaWorkers (ACM)** is a network of journalists, media workers and media associations spanning the Caribbean Basin. It was established in Barbados in 2001 and is currently headquartered in Trinidad and Tobago. Its membership includes media professionals and their representative organisations from countries of the Caribbean Community (CARICOM) and the Dutch, Spanish and French-speaking Caribbean.



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*Cover: Monsignor Ramón de la Rosa y Carpio (R), the archbishop of Santiago de los Caballeros, Dominican Republic, presents IPI Executive Director Alison Bethel McKenzie with a copy of his manual on journalism ethics. Photo: Genris García for IPI.*

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# 1. Introduction

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## Background

In April 2013, the International Press Institute (IPI), together with its strategic partner, the Association of Caribbean MediaWorkers (ACM), conducted a three-week mission to six Caribbean countries: Antigua and Barbuda, Guyana, Suriname, the Dominican Republic, Trinidad and Tobago, and Curaçao. The mission took place under the umbrella of IPI's flagship campaign to repeal criminal defamation in the Caribbean and was designed to follow-up on the success of IPI's first mission to the region, in June 2012.

The aim of IPI's campaign is to encourage government officials in the Caribbean to repeal outdated laws that criminally punish defamation, which includes, for IPI's purposes: libel, seditious libel, contempt of authority, and insult, both of individuals and of the state itself. In nearly all cases, these laws have been left over from colonial powers, for which they served as a convenient tool for preserving authority and stamping out criticism.

At the time of this writing, all 16 independent states in the Caribbean (all island states plus Belize, Guyana, and Suriname) maintain some form of the above-mentioned laws. All prescribe jail terms of at least one year in prison; in some, journalists face up to five or seven years behind bars.<sup>1</sup>

Far from being dormant, these laws have been applied by a number of Caribbean governments—including Antigua and Barbuda, Cuba, the Dominican Republic, Grenada, Haiti, and Suriname—in recent years. The examples set by these prosecutions, which have seen some journalists sentenced to prison, risk instilling self-censorship in the media and thereby depriving readers, viewers, and listeners of information in the public interest.

## Criminal defamation laws: An insult to democracy

“In democratic societies, the activities of public officials must be open to public scrutiny. Criminal defamation laws intimidate individuals from exposing wrongdoing by public officials and such laws are therefore incompatible with freedom of expression,” wrote the special rapporteurs of the Organization of American States (OAS) and the African Commission on Human and Peoples' Rights (ACHPR) in a 2005 joint declaration.<sup>2</sup>

Increasingly, both intergovernmental bodies and civil society take the view that criminal defamation laws violate the right to free expression, as enshrined in Article 19 of the UN Universal Declaration of Human Rights. In a landmark opinion in February 2012, the UN Human Rights Committee, studying the case of a Philippine journalist charged with criminal libel, found that the sections of the Philippine criminal code that establish defamation offences were incompatible with the Universal Declaration of Human Rights and unreasonably infringed upon the journalist's right to free speech. In its review, the Committee criticised the Philippine law for allowing “no proof of truth as a defense except for very limited cases”, and it repeated its previous call for UN member states to “consider the decriminalisation of defamation.”

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<sup>1</sup> For detailed information on the state of criminal defamation laws in all Caribbean countries, please see “IPI Special Report: Criminal defamation laws remain widespread in the Caribbean”, available online at: [www.freemedia.at/home/singleview/article/ipi-special-report-criminal-defamation-laws-remain-widespread-in-the-caribbean.html](http://www.freemedia.at/home/singleview/article/ipi-special-report-criminal-defamation-laws-remain-widespread-in-the-caribbean.html)

<sup>2</sup> [www.oas.org/en/iachr/expression/showarticle.asp?artID=394&IID=1](http://www.oas.org/en/iachr/expression/showarticle.asp?artID=394&IID=1)

IPI, for its part, believes that so long as they remain on the books criminal libel laws are prone to abuse by prominent figures who seek to squelch critical coverage in order to silence investigations into their wrongdoings and other activities, and therewith protect their economic or political interests, maintain power, and possibly avoid criminal liability. IPI considers laws that punish “insult” or speech viewed as “contemptuous of authority” to be undemocratic and incompatible with notions of free speech.

### **A new legal environment**

“There seems to be a consensus that criminal defamation laws, being subject as they are to abuse by officials, should be repealed or severely limited in scope,” wrote Dr. Anthony Fargo, director of the Center for Media Law and Policy Studies at Indiana University and author of an IPI-commissioned report on international standards regarding criminal libel. “At the same time, there is at least some consensus that people should be able to protect their reputations from false and damaging published statements.”

Indeed, as strongly as it believes that criminal defamation laws are dangerous and outdated, IPI understands that people have a right to protect their reputations. IPI’s goal is not to exempt the media from any kind of oversight, but rather to:

- a) Remove the power to abuse criminal law to discipline the media profession and
- b) Create a *positive legal environment* that respects the role of the press in society and that focuses primarily on ensuring that the victims of false or misleading press coverage can adequately redress any damage done to their reputations.

IPI believes these goals can be accomplished by a combination of the following:

- ❖ Media codes of conduct: Media houses should develop and enforce self-regulatory ethical codes of conduct that encourage factual, fair, and balanced reporting.
- ❖ Rights of comment and reply: Citizens should have the right to respond, within reasonable editorial guidelines, to coverage involving themselves in a newspaper or other medium.
- ❖ Civil media regulatory councils: In many countries, media regulatory councils are an effective way of enforcing standards; these may be self-regulatory (comprised of editors, journalists, and possibly members of civil society) or citizen regulated (comprised of citizens who are neither media workers nor representatives of the government). IPI opposes statutory regulation, i.e. a situation in which the media industry is supervised by the government to ensure that certain rules are being followed rather than be allowed to supervise or control itself.
- ❖ Media associations: Strong, independent media associations can use membership policies and collective weight/influence to enforce high standards.
- ❖ Civil litigation: Civil lawsuits are an acceptable avenue for defamation complaints, as long as any financial or other awards meted out are aimed not at silencing journalists and media organisations, but solely at compensating for any damage done to reputation (In most cases, only actual damages, not punitive damages, should be applied).

Although IPI in general resists the criminalisation of speech or expression, it should also be made clear that where speech poses a legitimate threat to societal well-being, states can have recourse to incitement, hate speech, and disorderly conduct laws. However, these should never be used to privilege a particular viewpoint or ideology.

The so-called “three-part test” can be used to determine whether such laws are acceptable under the free-speech guarantees found in the International Covenant on Civil and Political Rights<sup>3</sup>:

- (a) It must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); and
- (b) It must pursue one of the purposes set out in article 19, paragraph 3, of the Covenant, namely (i) to protect the rights or reputations of others, or (ii) to protect national security or of public order, or of public health or morals (principle of legitimacy); and
- (c) It must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality)

### **Press freedom in the Caribbean**

By no means was IPI’s mission exclusively focused on criminal defamation. In meetings with publishers, editors, and journalists; representatives of law enforcement agencies; civil society groups; and law and journalism faculties, IPI sought to understand the most pressing issues facing the media in the Caribbean, as well as advocate for substantive changes that would promote a freer flow of information in the region.

The Caribbean generally scores highly in press freedom rankings, particularly in comparison to its Latin American neighbours. According to Freedom House’s 2013 Global Press Freedom Rankings<sup>4</sup>, 11 of the 15 (out of 35!) countries with free presses in the Western Hemisphere are found in the Caribbean. Four Caribbean countries are considered “partly free” and just one, Cuba, is considered “not free.”

Despite these rosy reviews, all is not well for the Caribbean media. Government pressure is on the rise: last year, for example, IPI expressed deep concern over the Trinidadian information ministry’s plan to compel private broadcasters to carry a daily quota of government content. Journalists on a number of islands continue to practise self-censorship, fearing the consequences of upsetting the status quo. Two journalists in the Dominican Republic alone were sentenced to prison for defamation last year. A reporter for an investigative news site in Antigua was shot at in March. State-owned media continue to serve as propaganda vehicles for the government in power rather than as providers of balanced information to the public. The list goes on.

During the mission, IPI engaged with these and a number of other critical issues including the safety of journalists, media licensing and diversity, freedom of information legislation, media ethics and professionalism, and impunity for crimes committed against the media. This report summarises that engagement and offers substantive recommendations.

In each country, IPI also sought to strengthen local journalists associations, which IPI believes should play a more active in promoting the practice of responsible journalism. In much of the Caribbean, the media is criticised for its failure to report fairly and accurately on many issues, particularly those involving politics; and some media owners are viewed as being too close to the government, therefore using the media outlet to

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<sup>3</sup> [www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf) ; All countries visited by IPI, except for Antigua and Barbuda, have signed and ratified the Covenant.

<sup>4</sup> [www.freedomhouse.org/sites/default/files/Global%20and%20regional%20tables.pdf](http://www.freedomhouse.org/sites/default/files/Global%20and%20regional%20tables.pdf)

promote one political party's views over another's. In some countries this has led to a backlash from the public against the media.

As IPI opposes statutory regulation of the media, media associations can serve as effective self-regulatory organs that, when properly functioning, help assuage public and governmental concerns about the power of the press.

The mission also substantially enhanced the credibility of the ACM as an authoritative regional partner in international efforts to promote removal of oppressive media laws. IPI would also like to thank the local ACM affiliates and the Dominican Republic Association of Journalists for their crucial contribution to this successful mission.

**a. Comparative Overview of Countries Visited on Mission**

|                             | <b>Antigua and Barbuda</b> | <b>Guyana</b>    | <b>Suriname</b>           | <b>Dominican Republic</b> | <b>Trinidad and Tobago</b> | <b>Curaçao</b>                     |
|-----------------------------|----------------------------|------------------|---------------------------|---------------------------|----------------------------|------------------------------------|
| <b>Government type</b>      | Const. monarchy            | Republic         | Republic                  | Republic                  | Republic                   | Const. monarchy                    |
| <b>Capital</b>              | St. John's                 | Georgetown       | Paramaribo                | Santo Domingo             | Port of Spain              | Willemstad                         |
| <b>Population</b>           | 83,000                     | 739,903          | 524,000                   | 10,219,630                | 1,225,225                  | 142,000                            |
| <b>Land Area</b>            | 442 sq km                  | 214,989 sq km    | 163,265 sq km             | 48,670 sq km              | 5,128 sq km                | 444 sq km                          |
| <b>Date of Independence</b> | 1 Nov. 1981 (UK)           | 26 May 1966 (UK) | 25 Nov 1975 (Netherlands) | 27 Feb 1944 (Haiti/Spain) | 31 Aug 1962 (UK)           | Part of Kingdom of the Netherlands |
| <b>GDP per capita</b>       | US\$ 17,500                | US\$ 8,000       | US\$ 12,300               | US\$ 9,800                | US\$ 20,400                | US\$ 15,000                        |
| <b>Legal system</b>         | Common law                 | Common law       | Civil law (Roman-Dutch)   | Civil law (French)        | Common law                 | Civil law (Dutch)                  |

**b. Map of the Caribbean**



Map: Wikipedia/Kmusser



## 2. Antigua and Barbuda

14 – 16 April 2013

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### Mission Participants

- ❖ Alison Bethel McKenzie, IPI executive director
- ❖ Colin James, president of the Antigua and Barbuda Media Congress (affiliate of the Association of Caribbean Media Workers)
- ❖ Scott Griffen, IPI press freedom adviser for Latin America and the Caribbean

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### Current Status of Criminal Defamation in Antigua and Barbuda

#### Background

Defamation remains a criminal offence in Antigua and Barbuda and has been used in recent times to prosecute journalists.

The principal legal source is The Libel and Slander Act<sup>5</sup>, which dates to 1876 and was last updated in 1976. The Act, which governs both criminal and civil libel, is identical to laws in Dominica and St. Kitts and Nevis and is a near-exact replica of Lord Campbell's Act, a British libel law first enacted in 1843.

Summary of Criminal Provisions:

- Libel with purpose of extortion: **Up to 3 years in prison with or without hard labour**
- Defamatory libel known to be false: **Up to 2 years in prison and fine**
- Defamatory libel: **Up to 1 year in prison and/or fine**
- Any defamatory statement other than libel: **Fine or up to 1 year in prison**
- Defamatory statement in relation to the personal character or conduct of any person: **Up to 9 months in prison and fine**

Truth is a limited defence and the burden of proof of such falls to the defendant. A defamatory statement is defined in Section 11 of the Act to be “a statement concerning any person which exposes him to hatred, ridicule, or contempt, or which causes him to be shunned, or avoided, or which has a tendency to injure him in his office, profession or trade.”

The crime of seditious libel is governed by The Sedition and Undesirable Publications Act<sup>6</sup>, which dates to 1938 and was last updated in 1956.

Summary of Criminal Provisions:

- Seditious Libel and Libel with Seditious Intent (writing, publishing, selling, importing); first offence, **imprisonment up to 2 years** with or without hard labour and/or fine of 5,000
- Subsequent offence: **imprisonment with or without hard labour up to 3 years**
- Possession of seditious publication: first offence: **fine of up to 3,000 or prison up to one year**

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<sup>5</sup> [www.laws.gov.ag/acts/chapters/cap-248.pdf](http://www.laws.gov.ag/acts/chapters/cap-248.pdf)

<sup>6</sup> [www.laws.gov.ag/acts/chapters/cap-396.pdf](http://www.laws.gov.ag/acts/chapters/cap-396.pdf)

- Subsequent offence: imprisonment with or without hard labour for a term not exceeding two years

“Seditious intent” is specifically defined as: bringing the sovereign into hatred or contempt; inciting people to crime; inciting disaffection against the administration of justice; raising discontent among citizens; and promoting feelings of ill-will and hostility between different classes.

Finally, the Small Charges Act<sup>7</sup> fines up to EC\$ 3,000 (€840) the publication of any “indecent matter” or “any advertisement regarding the cure of venereal complaints or secret diseases”.

### **Relevant constitutional principles**

The Antigua and Barbuda Constitutional Order 1981<sup>8</sup>  
Chapter II, Section 12

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression [...] For the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive information and ideas without interference, freedom to disseminate information and ideas without interference (whether the dissemination be to the public generally or to any person or class of persons) and freedom from interference with his correspondence or other means of communication.

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required i) in the interests of defence, public safety, public order, public morality or public health; or ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of Parliament and the courts, or regulating telephony, posts, broadcasting or other means of communication, public entertainment's, public shows; or iii) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **Recent application**

In 2005, Gene Pestaina, then-director of public prosecutions, filed criminal libel charges against Lennox Linton, a Dominican-born journalist and manager of Observer Radio over comments Linton made on the Sept. 16, 2005 edition of the program Wake Up Call. According to media reports, Linton said he “[w]ould not be provoked into making any comment as to the suitability of Gene Pestaina for the Office of the Director of Public Prosecutions.” That and other comments reportedly came as Linton asked about planned investigations against several former government ministers.<sup>9</sup>

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

<sup>7</sup> [www.laws.gov.ag/acts/chapters/cap-405.pdf](http://www.laws.gov.ag/acts/chapters/cap-405.pdf)

<sup>8</sup> [pdba.georgetown.edu/constitutions/antigua/antigua-barbuda.html](http://pdba.georgetown.edu/constitutions/antigua/antigua-barbuda.html)

<sup>9</sup> [www.caribbean360.com/index.php/news/9679.html#ixzz2OdfcW8nv](http://www.caribbean360.com/index.php/news/9679.html#ixzz2OdfcW8nv)

given his rights under the CARICOM (Caribbean Community and Common Market) Single Market Treaty. The Court awarded Linton EC\$ 20,000 (€ 5,500) in damages.<sup>10</sup>

## **Mission Findings**

During its three-day visit to Antigua and Barbuda, IPI received a number of strong commitments from leading government officials regarding the repeal of criminal libel.

In a meeting with IPI delegates, Prime Minister Winston Baldwin Spencer of the United Progressive Party (UPP) agreed that criminal defamation laws have no place in a democracy. “In this modern age, we have difficulty justifying the existence of such laws,” he admitted, and resolved to raise the matter with the country’s full cabinet.

He added: “If a journalist is faced with prison for doing his or her job, that undermines freedom of the press.” The prime minister informed IPI Executive Director Alison Bethel McKenzie that he wished to see the legal reform completed by May 3<sup>rd</sup>, World Press Freedom Day, which in 2013 was observed regionally in Willemstad, Curaçao. At the time of this report’s release, July 2013, the repeal of criminal defamation in Antigua and Barbuda had not yet occurred.

Bethel McKenzie, thanking the prime minister for his leadership on the issue, noted that she understood such changes may take time and expressed her desire to see criminal defamation repealed by the next general elections, scheduled for early 2014. The issue of seditious libel was not raised in the meeting with the prime minister.

Unlike many other figures with whom IPI met during the mission, the prime minister did not emphasise a lack of journalist responsibility in Antigua and Barbuda. Instead, he observed: “it’s one way or the other—if you embrace press freedom, you must also respect the consequences [of that decision].”

Attorney General Justin L. Simon largely echoed the prime minister’s views, confirming IPI’s opinion that “civil remedies are the proper remedy [for defamation], not imprisonment.” He assured the IPI delegation: “You won’t have any difficulties with the repeal of criminal defamation here.”

The attorney general expressed interest in completely scrapping the Libel and Slander Act, and replacing it with a modern defamation act, perhaps modelled on a libel bill currently being considered by Jamaica’s parliament.

IPI also met with Shawn Nicholas, senator with responsibility for information and state-owned media and a former broadcast journalist. Senator Nicholas also told IPI she supported the repeal of criminal defamation and declared: “I will be working hard to make sure that’s done and off the books.”

On the other side of the political spectrum, Gaston Browne, the leader of the opposition Antigua Labour Party (ALP), welcomed IPI at ALP headquarters and gave his resounding support to IPI’s goal of repeal. Browne branded criminal defamation laws ‘inimical to a free press’ and pledged, “If the present government does not repeal this legislation by the 2014 general elections, the ALP will do so within 90 days of taking power.”

<sup>10</sup> [www.eccourts.org/wp-content/files\\_mf/1359143616\\_magicfields\\_pdf\\_file\\_upload\\_1\\_1.pdf](http://www.eccourts.org/wp-content/files_mf/1359143616_magicfields_pdf_file_upload_1_1.pdf)

The opposition leader added that if and when the UPP brought a bill on the matter before Parliament, “they will have our full support,” asserting that the governing party would then “have no excuse” not to expedite the repeal of criminal defamation.

“We were impressed that both the government and the opposition appeared to approach this issue seriously, with both sides coming down categorically on the side of repeal and, therefore, of greater press freedom in Antigua and Barbuda,” said Bethel McKenzie, following the mission. “In particular, we were thrilled with the commitments made by the prime minister to accelerate the removal of these outdated and wholly unnecessary laws.”

Colin James, president of the Antigua and Barbuda Media Congress, who accompanied the IPI mission, said after the mission: “The Antigua and Barbuda Media Congress (ABMC) welcomes the statements of Prime Minister Baldwin Spencer and leader of the opposition Gaston Browne and the commitment given by the Attorney General Justin Simon that they will support the repeal of criminal libel from the laws of Antigua and Barbuda.”

He added: “This is a positive first step and the ABMC will closely watching to ensure that the politicians’ words are followed up by timely action.”



The IPI delegation in Antigua and Barbuda (from L to R): Scott Griffen, Alison Bethel McKenzie, and Colin James. Photo: IPI.

As for the media itself, while all editors and journalists with whom IPI spoke supported the repeal of criminal defamation, many stressed the need to improve standards of reporting in the country.

“Some of us push the envelope too much,” one journalist admitted to the delegation, during a roundtable held in St. John’s, the country’s capital. “Repealing criminal defamation is a good thing, but it has to be accompanied by training.”

An editor, emphasising the urgent need for training in journalism ethics noted separately, “There is a fine line between opinion and libel.”

Additionally, despite the fact that the country’s criminal libel law was invoked as recently as 2005, a number of media workers were unaware that the law remained on the books. IPI pointed out in all of its meetings that although few

journalists had been prosecuted for criminal libel in recent times, the only way to ensure that such provisions would not be used against reporters in the future was to eliminate them entirely.

Sir Clare Roberts, a prominent attorney and former president of the Inter-American Commission on Human Rights (2004-2005), expressed his support for IPI’s campaign but

confirmed that criminal libel was not seen as “a hot-button topic” in Antigua and Barbuda. He speculated this situation was partly due to the relatively low number of legal actions against the media.

“The courts are not causing journalists fear to express their opinion,” Sir Roberts told the delegation, noting that past damages in civil defamation cases have amounted to “a slap on the wrist.”

### **Defamation and talk radio**

One of the biggest issues with which the Antiguan media is currently wrestling involves the relatively unregulated terrain of talk radio, a popular medium of communication in Antigua and Barbuda that is nevertheless relatively new, having been introduced within the past 12 years. During this time, it has also been the subject of numerous civil suits for defamation.

Journalists told the IPI delegation that radio hosts—several of whom have no media background—often make inflammatory comments on air in order to boost ratings. Additionally, there is a growing difficulty with listeners calling in and making potentially slanderous statements that then become grounds for lawsuits against the media company.

For example, in 2007, the Eastern Caribbean Supreme Court, which has final jurisdiction in Antigua and Barbuda, ordered ZDK Radio to pay EC\$ 20,000 (€5,500) to members of the prominent Mansoor family after a ZDK host and an anonymous female caller implied on air that the Mansoors had committed electoral fraud.

In the decision (ANUHCV 2004/0408<sup>11</sup>), Judge Louise Esther Blenman wrote that “all of the persons who in anyway contribute to the publication of the words would be liable for the defamatory statements,” meaning the radio’s editor and host, et al.

Despite this potential liability, most radio stations in Antigua and Barbuda have not developed guidelines for cutting off commenters who may commit slander nor have they offered training for the technicians who are often forced to make split-second decisions about how to balance freedom of expression with broadcasting standards.

ZDK Station Manager Sean Bird, who characterised talk radio in Antigua and Barbuda as “a bit extreme”, agreed on the need to train technicians, admitting that rules for handling callers “were not enforced enough.” He also stated that talk show hosts in his country were taking a lead from radio hosts in the United States, who he said thrived on “controversy.” In addition to the Mansoor case, ZDK has been the target of several other civil libel suits—in 2011, it was ordered to pay EC\$ 50,000 (€14,000) each to two government ministers, again for defamatory comments made by a host and a caller<sup>12</sup>.

### **History of press freedom in Antigua and Barbuda**

Despite the praiseworthy commitments made by the Antiguan government to repeal criminal defamation, freedom of the press has had a somewhat troubled history in this twin-island nation, which gained independence from the United Kingdom in 1981. Between 1981 and 2004, Antigua and Barbuda was governed by the ALP and father-and-son prime ministers Vere (1981 – 1994) and Lester Bird (1994 – 2004). The UPP won the 2004 general election, with Baldwin Spencer assuming the top post.

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<sup>11</sup> [www.eccourts.org/judgments/decisions/2008/AbrahamMansoor et al v GrenvilleRadioLtd et al.pdf](http://www.eccourts.org/judgments/decisions/2008/AbrahamMansoor%20et%20al%20v%20GrenvilleRadioLtd%20et%20al.pdf)

<sup>12</sup> [www.antiguaobserver.com/zdk-to-appeal-defamation-damages/](http://www.antiguaobserver.com/zdk-to-appeal-defamation-damages/)

In 1985, journalist and opposition political figure Tim Hector was convicted of spreading “false news” under Section 33B of the Public Order Act after publishing an article critical of the ALP government. Briefly jailed following the ruling, Hector, then-editor of the weekly newspaper *Outlet*, successfully appealed his case to the Privy Council of the United Kingdom. In striking down Section 33B, the Council commented<sup>13</sup>, “In a democratic society it is almost too obvious to need stating that those who hold office in government and who are responsible for public administration must also be open to criticism.”

Hector, however, continued to encounter difficulties in his journalistic work: in 1998, *Outlet* was the victim of an unsolved arson attack that forced it to relocate its printing press to Barbados.



Colin James, president of the Antigua and Barbuda Media Congress, talks with journalists in the Antigua Observer newsroom. Photo: IPI.

In 1996, brothers Winston and Samuel Derrick launched an independent radio station, Observer Radio, to challenge a government monopoly on broadcasting. One day after the start of broadcasting, authorities closed the station and seized equipment, allegedly because the brothers lacked a broadcasting license (although the Derricks had received a business license, their request for a broadcast license 17 months prior had gone unanswered). In 2001, the Privy Council ordered a broadcast license to be issued to Observer Radio and for all seized equipment to be returned.<sup>14</sup> Winston Derrick, who passed away just two months prior to IPI’s visit to Antigua and Barbuda, also co-founded *The Daily Observer*, now one of the country’s leading print publications.

“It is true that when we were in government, the press was not free,” Gaston Browne, who last year became the first ALP leader not of the Bird family, told the IPI delegation. “We have had some issues with the press, including abuses by the Labour Party. I am not here to condemn the mistakes of the past, but we will learn from those mistakes.”

<sup>13</sup> [www.bailii.org/uk/cases/UKPC/1990/1990\\_3.html](http://www.bailii.org/uk/cases/UKPC/1990/1990_3.html)

<sup>14</sup> [www.eccourts.org/judgments/privy\\_council/2001/ObserverPublications\\_v\\_CampbellMatthewetal.pdf](http://www.eccourts.org/judgments/privy_council/2001/ObserverPublications_v_CampbellMatthewetal.pdf)

### **State vs. public radio**

Browne also stated that, should his party win next year's general election, he would be "inclined to privatise ABS," using the acronym for Antigua Broadcasting System, the state broadcaster. Doing so, he said, would help to ensure the station's independence.

Indeed, media observers told IPI that ABS tends to serve as a mouthpiece for the government in power rather than as a source of balanced information for the Antiguan people. During ALP rule in the early 2000s, then-opposition leader Spencer sued to get equal airtime on ABS. In Browne's view, the tables had now turned: in 2008, the ALP sued on the same grounds.

IPI has long been opposed to state-owned broadcasters, although it does not believe that privatisation is the only solution; an editorially independent public broadcaster could be equally valuable.

In its 1993 Vienna Declaration of Public Broadcasting, IPI declared its "unconditional support for the development of editorially independent public service broadcasting to replace state-controlled broadcasting structures." The Declaration also:

"Calls on managements and staff representations to commit broadcasting journalists to editorial integrity. **The highest aim must be free and fair information to the public.** All aspects of an issue are to be presented with journalist integrity, in a balanced manner and within an appropriate period of time." (*emphasis added*)

In 2013, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression; the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media; the Organization of American States (OAS) Special Rapporteur on Freedom of Expression; and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information released a joint statement on digital broadcasting rights in which they reiterated their call for '*any government or State broadcasters [to be] transformed into public service broadcasters.*'<sup>15</sup> (*emphasis added*)

### **Intimidation of the investigative press**

In part because of the apparent improvement in press freedom in Antigua and Barbuda over the last decade, IPI was shocked to hear serious allegations of intimidation directed at the investigative news site Caribarena, founded in late 2007.

Caribarena's editors painted a much different picture of the country's media environment than was heard elsewhere—one that included violence and fear. "We are fighting here, but we are scared," the editors told IPI, noting that the site no longer uses bylines. The editors recounted that their home had been broken into twice and that stones were frequently thrown at their cars; they also claim the government has pressured private advertisers not to cooperate with Caribarena.

The editors believe they are the targets of a harassment campaign due to Caribarena's investigative reporting on sensitive issues. For example, Caribarena said that the threats against it intensified after coverage late last year of suspected irregularities in a debt agreement between the Japanese-owned IHI debt settlement company and the Antiguan government. Most troublingly, in March a Caribarena journalist was shot at while on assignment at a cricket match. Caribarena's editors told IPI that police had not followed up on a claim filed by the reporter, leaving the latter "afraid" and "unwilling to speak"

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<sup>15</sup> [www.osce.org/fom/101257](http://www.osce.org/fom/101257)

about the incident. Caribarena said it was now implementing a safety protocol for its staff.

Caribarena's editors also directed IPI's attention to recent comments made by Prime Minister Spencer as an example of what they view as the government's problematic attitude toward the site's reporting. During a visit to Bermuda in Sept. 2012, the prime minister criticised a Bermudian online medium, Bernews, and proceeded to tell the audience at the Bermuda Industrial Union that Antigua was home to a similar site, "... a place where anonymous commentators can spew some of the most vile rhetoric under a cloak of anonymity that affords them the ability to say what they really think."<sup>16</sup>

In the speech, the prime minister appears to be referring to online comment sections. IPI recognises that the issue of libellous content arising through these sections—which are valuable avenues for average citizens to express their opinions—is vexing and not always cut-and-dry from a legal perspective. In general, newspapers should have an employee(s) to filter postings as fast as reasonably possible. While it is not in doubt that newspapers can be held liable for comments posted, international standards increasingly hold that courts should give sites breathing room in this respect: in IPI's view, holding a site liable for a comment that was left for just one day is unreasonable.

### **Media bias and politicisation**

IPI was also troubled by the (both real and perceived) level of politicisation among the country's media, which Sir Roberts described as "clouded with politics." Indeed, nearly all radio and print outlets are viewed as being aligned with a particular political party, which journalists say directly affects content. As one journalist put it, "the public only ever gets biased information."

Several journalists told IPI they feel pressured to report from a particular political standpoint and, worse, that some editors alter copy to supply a particular bent. "It is a big problem, and they [the editors] don't think much of it," a journalist commented. "But even changing one word can have big consequences for you."

Due to this perceived bias, some politicians will refuse to speak to a media house "representing" a different party. "We have the experience where a politician will tell us that he or she doesn't know anything about a particular story, but then the next day the information appears in a different paper," another journalist explained.

### **Transparency and investigative journalism**

The UPP campaigned on a "sunshine government" platform in 2004 and, shortly after taking office, passed the Freedom of Information (FOI) Act<sup>17</sup>. However, IPI found that the law has not been fully implemented. For example, its requirement that each public authority "designate one of its officers an information officer" to facilitate requests has not been met.

Instead, the government has created the post of information commissioner, serving as an FOI administrator for all departments. Browne, the ALP leader, told IPI he had "personally tested the law" and received no response. When he complained to the former commissioner, she replied that she did not have enough resources. The present

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<sup>16</sup> [bernews.com/2012/09/full-speech-baldwin-spencer-at-biu-banquet/](http://bernews.com/2012/09/full-speech-baldwin-spencer-at-biu-banquet/)

<sup>17</sup> [www.rti-rating.org/pdf/Antigua.pdf](http://www.rti-rating.org/pdf/Antigua.pdf)



commissioner, appointed last year, has vowed to improve the law's functioning, including by adding the necessary staff.<sup>18</sup>

In an interview with *The Daily Observer*, Bethel McKenzie said she understood the “genuine concerns” about the costs of fully implementing the law. But, she added, “we believe it's a very important investment for the community, not just for journalists.” Bethel McKenzie also encouraged journalists to take full advantage of the law and to hold the government accountable when requests for information went unanswered.

Journalists in Antigua confirm that government transparency is a problem, for which reason IPI believes effective implementation of the FOI law is urgent. In 2012, for



*A view of the new terminal at V.C. Bird International Airport in Antigua, being built with assistance from the China Civil Engineering Construction Corporation. Photo: IPI.*

example, after Caribarena and other media outlets published photos of rusted machine parts and aging, faulty engines at a Chinese-constructed US\$ 47 million (€35 million) power plant that Antiguan authorities claimed had been built completely new,<sup>19</sup> Antiguan media had to fight for over a year to obtain details of the exact agreement between the Antiguan and Chinese governments.

Overall, IPI found that investigative journalism in Antigua and Barbuda

tended to stay away from sensitive issues such as tourism and foreign investment. “Journalists here are timid,” one editor told the delegation, “and in a small country such as ours, everything is personal.”

“Undoubtedly, some subjects are more delicate than others,” Bethel McKenzie said. “But we believe that the role of the media in any country is to inform citizens about matters that affect their lives. No matter how uncomfortable or inconvenient certain information may seem, the Antiguan people have a right to know about it.”

<sup>18</sup> [www.caribarena.com/antigua/news/latest/102790-information-commissioner-puts-structures-in-place.html](http://www.caribarena.com/antigua/news/latest/102790-information-commissioner-puts-structures-in-place.html)

<sup>19</sup> [www.caribarena.com/antigua/news/latest/99330-chinese-power-plant-or-antiguas-white-elephant.html](http://www.caribarena.com/antigua/news/latest/99330-chinese-power-plant-or-antiguas-white-elephant.html)

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## Recommendations

### For the government:

- Reform the Libel and Slander Act to reflect international standards, including the decriminalisation of defamation
- Repeal the Seditious and Undesirable Publications Act
- Transform the state broadcaster (ABS) into a public broadcaster that serves the interests of all Antiguans
- Allow journalists to report freely—without interference or intimidation—on all topics
- Investigate any reports of physical violence or threatening behaviour toward any media house, regardless of that media house's perceived political leanings
- Provide equal access to government sources for all media, regardless of perceived political affiliation
- Fully implement the Freedom of Information Act by providing the necessary administrative and financial resources to the information commissioner

### For the media:

- Focus on producing content that is balanced and free of political bias; take care not to insert a political slant in news and analysis reports
- Take advantage of the Freedom of Information law and follow up if requests are not honoured
- Invest in training to improve the quality of reporting, and of investigative reporting in particular
- Radio stations should establish general conduct guidelines for hosts and provide training for hosts and technicians on how to deal with callers whose comments may be actionable
- Strengthen the Antigua and Barbuda Media Congress to serve as a united voice for the media
- Filter online comment sections to remove potentially libellous or otherwise offensive material as fast as reasonably possible
- Establish a self-regulatory system that all media houses can agree to and participate fully in

### 3. Guyana

18 – 20 April 2013

#### Mission Participants

- ❖ Alison Bethel McKenzie, IPI executive director
- ❖ Bert Wilkinson, executive member of the Association of Caribbean Media Workers in Guyana
- ❖ John Yearwood, IPI vice-chair and chairman of IPI's North American Committee; world editor of *The Miami Herald*
- ❖ Scott Griffen, IPI press freedom adviser for Latin America and the Caribbean

#### Current Status of Criminal Defamation in Guyana

##### Background

Laws governing criminal defamation in Guyana are set forth in the Criminal Law (Offences) Act, Sections 110 – 114.

Criminal Libel (Sections 110 – 114)

- Defamatory Libel: **Up to 1 year in prison and fine**
- Defamatory libel known to be false: **Up to 2 years in prison and fine**
- Extortory libel: **Up to 3 years in prison**

Seditious Libel (Section 321)

- Seditious Libel: **Up to 2 years prison and fine**

Other Relevant Provisions:

- Blasphemous Libel: Criminal Law (Offences) Act, Section 348, **up to 1 year in prison**
- Obscene Libel: Criminal Law (Offences) Act, Section 351, selling or publishing obscene matter, **up to 2 years in prison**

##### Recent application

IPI is not aware of any recent prosecutions of journalists under Guyana's criminal defamation laws. However, there have been a number of civil suits filed by government officials against journalists.

##### Attempts to reform defamation Law

IPI is not aware of any previous attempts to reform Guyana's defamation laws.

##### Constitutional principles

The Guyanese Constitution (1980) does not contain explicit protections for the press. Article 146 (Part 2, Title 1), however, declares:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.

As in most regional constitutions, the Guyanese Constitution reserves the right of the government to contravene the above provision when “reasonably required in the interests of defence, public safety, public order, public morality or public health”.

## **Mission Findings**

### **Criminal defamation**

During its three-day visit to Guyana, IPI presented its view to leading government officials that criminal defamation laws are an affront to the values of democratic society and should be repealed. Guyanese officials generally agreed with IPI, but many expressed concerns about a lack of media responsibility in the country.

In a meeting with IPI delegates, Attorney General Anil Nandlall expressly agreed that journalists “should not go to jail for practising their craft,” and pledged to prepare a memo on the issue for the country’s cabinet. Nandlall stated: “I cannot see the utility of having something in the law that is not used,” adding that no Guyanese journalist had been charged with criminal libel in recent times.

The attorney general urged IPI to emphasise the importance of media ethics. “The media is one of the most powerful organisations in the world,” he noted, “and with that power comes a commensurate responsibility.” Nandlall stressed in particular that in Guyana, which he described as a “society with underlying tensions,” journalists must be aware of their context.

Prime Minister Samuel Hinds was more explicit in his criticism of the media, asserting that the Guyanese independent press engages in “premeditated distortion” that “maximises the social problems in our society.”

The prime minister presented the IPI delegation with photocopies of an article from that day’s issue of a leading newspaper whose headline he claimed contained a false statement about him and did not match exactly the article’s content. Visibly angry, he implied that the original headline may have been changed in the editorial process to suit a particular political bias.

When IPI Executive Director Alison Bethel McKenzie first expressed IPI’s opinion about criminal defamation, the prime minister commented, “Jail would be a good place for a lot of publishers and editors to be.” However, the prime minister later appeared more open to the idea of repealing criminal defamation, with the understanding that the media could still be held liable in civil suits.

Bethel McKenzie told the prime minister that she understood that there were widespread frustrations and concerns about perceived media irresponsibility in Guyana. But, she argued, “having a vibrant media is part of a democracy—what is our alternative?”

IPI also met with Gail Teixeira, adviser on governance to President Donald Ramotar. Teixeira informed IPI that while she could not make any specific promises, the government was “not opposed to changing it [criminal libel law].” Like other political figures, Teixeira welcomed IPI’s commitment to providing journalist training in Guyana, stating, “We don’t want everyone to love the government, we just want fair and accurate reporting.”

“While we would have liked a more concrete commitment from the Guyanese government on the repeal of criminal defamation and though we anticipate that the process of repeal will take some time, I am satisfied that the country's top officials generally agreed with our position,” said Bethel McKenzie.



*From L: Scott Griffen, John Yearwood, and Alison Bethel McKenzie talk with Gail Teixeira, presidential adviser on governance, on the balcony of the Guyanese National Assembly in Georgetown. Photo: IPI.*

IPI also presented the Guyanese government with a comprehensive study of the country's criminal libel law, prepared by Dr. Anthony Fargo, director of the Center for International Media Law and Policy Studies at Indiana University (United States). The study provided details on how the law could be reformed to meet international standards.

The Guyanese opposition was notably more supportive of repealing criminal libel. “Count my entire party in,” Khemraj Ramjattan, leader of the Alliance for Change (AFC), told the delegation. “You have my instant support.”

Although broadly sympathetic to IPI's view, Brigadier David Granger, leader of A Partnership for National Unity (APNU), expressed scepticism that media self-regulation would be sufficient to protect reputations. “When you are surrounded by large numbers of untrained reporters, there does exist the danger of defamation, which requires more than an apology afterward.”

### **Broadcasting licenses**

Guyanese media welcomed IPI's campaign—Anand Persaud, editor-in-chief of *Stabroek News*, noted that criminal defamation was “ultimately a weapon that can be used at any point”—but used the opportunity of IPI's visit to highlight another serious issue affecting the press: alleged government discrimination in the awarding of radio and television licenses in the country.

Here, two basic points must be understood. The first is that the Guyanese government, until 2011, exercised a complete radio monopoly, while also controlling the majority of the country's television stations (in addition, state corporations also maintain a monopoly on landline telephone services and all international calling<sup>20</sup>). The second is that attempts to diversify the sector have been consistently stonewalled: a number of independent media outlets—including television broadcasters Capitol News and Prime News and print media *Stabroek News* and *Kaieteur News*—have had their broadcast applications denied or ignored, in some cases for more than 20 years.

Enrico Woolford, managing editor of Capitol News, explained to IPI that he had applied for a radio license in October 1997 but in 16 years had yet to even receive a response. Julia Johnson, founder of Prime News, first applied for a television broadcasting license in 2001 and was similarly denied (currently, without its own license, Prime News is forced to rent space on an existing channel to broadcast its nightly news segment). *Stabroek News* submitted the first of its many radio-license applications in April 1993—all of which have gone unacknowledged by the authorities.

Editors of these media accuse the government of purposely denying them broadcasting rights because of their perceived political position and their sometimes critical reporting on government issues. Indeed, these media are frequently referred to by government officials as the “opposition press.”

In 2003, Woolford, Johnson, and other applicants were informed by authorities that the National Frequency Management Board would issue no new television or radio licenses until the enactment of new broadcasting legislation. This agreement was made official by a written agreement, made public on May 6, 2003, between then-president Bharrat Jagdeo and then-opposition-leader Robert Corbin.

Nearly nine years later, in 2011, Guyana's National Assembly finally passed the Broadcast Act, which was intended to open up the spectrum and award licenses on a merit basis. The Act formally took effect in Sept. 2012 with the constitution of the National Broadcast Authority. However, in Nov. 2011, President Jagdeo had already unilaterally ended the government's radio monopoly by awarding 22 radio licenses to recipients who remained secret until the government was forced to disclose their names in March 2012<sup>21</sup>, one month prior to IPI's arrival in Guyana.

According to court documents obtained by IPI, 15 of the 22 licenses were awarded to three companies—Telecor and Cultural Broadcasting Inc., New Guyana Co. Ltd., and Radio Guyana Inc.—whose owners and boards are dotted with family members and friends of the former president and government ministers. For example, reports indicate that Telecor's board includes Jagdeo's niece, Kamini Persaud, while Radio Guyana's owner, Ranjisinghi Ramroop, has been described in the media as Jagdeo's “best friend.” Two further licenses were issued to individuals said to be strong supporters of the PPP. None were granted to the so-called “opposition media” and all were issued apparently in spite of the 2003 agreement noted above. Finally, it was also revealed that the government had issued one broadcast license each to Quark Communications and E-Networks, both of which are owned, again, by individuals with close connections to the former president.

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<sup>20</sup> For example, the communications provider Digicel explained to IPI that all international calls it carries must be rerouted through a “licensed” carrier, i.e. Guyana Telephone & Telegraph (GT&T)

<sup>21</sup> An opposition MP, Cathy Hughes (AFC), succeeded in compelling the prime minister to reveal the identities of the recipients.

The revelation of the license recipients unleashed a firestorm, with media and political opposition accusing the government of disrespecting both the 2003 agreement and the idea, that license deliberations would be open and independent. Woolford, a past president of the Guyana Press Association (GPA), filed suit in late April, accusing the government of attempting to “colonise and control the broadcasting spectrum and airwaves,” according to his sworn court affidavit. Protesters, led by *Kaieteur News* editor Glenn Lall, took their grievances to the street, with demonstrations held as far away as the regional observance of World Press Freedom Day in Willemstad, Curaçao.

The Guyanese government has appeared unmoved by the criticisms. Dr. Roger Luncheon, head of the Presidential Secretariat, defended the issuing of the 22 licenses, correctly pointing out that the Post and Telegraph Act, which regulated broadcasting prior to the Broadcasting Act, gave the country’s information minister ‘the final say’ in license applications. In Guyana, the information minister also happens to be the president.

In his comments, Luncheon added, “There will always be some who don’t get [licenses] ... [and] I know the *Kaieteur News* of this world will continue to be denied.”<sup>22</sup>

The government’s position has not been helped by the fact that the Broadcast Authority, whose members are appointed by the president, is comprised almost exclusively of individuals with links to the ruling party, none of whom apparently have any experience in the broadcasting sector. Its chairperson, Bibi Shadick, is a former minister of human services, while other members include a former army chief, the current head of the Guyana Livestock Development Authority, and a lawyer in the president’s office.



*John Yearwood and Alison Bethel McKenzie give an interview to broadcaster Capitol News about IPI’s goals for its Guyana mission. Photo: IPI.*

Its chairperson, Bibi Shadick, is a former minister of human services, while other members include a former army chief, the current head of the Guyana Livestock Development Authority, and a lawyer in the president’s office.

Persaud, of *Stabroek News*, told IPI that his paper had no plans to apply under the new authority, arguing that it “would validate what happened in the past.” Of the Broadcast Authority he added, “We can’t expect to have a fair hearing.”

At the time of this writing, the Broadcast Authority had not awarded any broadcasting licenses, nor considered the applications of the media listed above.

In May 2013, the UN Special Rapporteur on Freedom of Opinion and Expression; the OSCE Representative on Freedom of the Media; the OAS Special Rapporteur on Freedom of Expression; and the ACHPR Special Rapporteur on Freedom of Expression and Access

<sup>22</sup> [www.kaieteurnews.com/2013/05/10/govt-shrugs-off-us-criticisms-over-radio-licencing-guyana-is-a-sovereign-state-that-makes-its-own-decisions/](http://www.kaieteurnews.com/2013/05/10/govt-shrugs-off-us-criticisms-over-radio-licencing-guyana-is-a-sovereign-state-that-makes-its-own-decisions/)

to Information released a joint statement on digital broadcasting rights in which they reiterated:

“The process for allocating broadcasting licenses should be strictly regulated by law and be guided by **clear, objective, transparent and democratic criteria**. This includes the need for the legal framework to be sufficiently clear to prevent arbitrary actions, including actions based on the editorial line of a broadcaster, to require decisions to be justified and published, and to allow for judicial review of decisions.”<sup>23</sup> (*emphasis added*)

In IPI’s view, these criteria have not been observed in Guyana. “While IPI was previously aware of allegations that broadcast licenses have been unfairly distributed in Guyana, our visit revealed the full depth and gravity of this issue,” Bethel McKenzie stated after the mission. “It is unthinkable that the license applications of certain media have been delayed or ignored for nearly two decades. We call upon the newly constituted Broadcast Authority to immediately undertake a speedy and fair review of any outstanding license applications and to ensure that all applications are subject to independent review.”

Bethel McKenzie added: “It is highly unusual that a sitting president should also be his or her country’s information minister, and we urge Guyana to end this practice so as to reduce the likelihood of conflicts of interest in dealing with the media.”

#### **Abuse of state media and the rhetoric of the “opposition press”**

Though Guyana boasts a vibrant private press, state media continues to be a powerful force. The state owns two broadcasting stations (the National Communications Network and GINA, the Government Information Agency) and one print medium (the *Guyana Chronicle*).

Unfortunately, the state media are widely viewed as propaganda vehicles for the government and appear to be frequently abused in order to attack the political opposition. One civil-society official stated that the state media “ignore facts in order to push the party line.” Brigadier Granger, of the APNU, asserted, “We have frequently been defamed by the state press.”

The APNU’s complaints were summarised in a document entitled “The Executive War on the Legislative Branch,” containing nearly 100 examples of GINA press releases during 2012 that APNU claims constituted deliberately biased and/or inflammatory attacks on itself and the AFC.

An IPI review of the document confirmed that the releases contained demeaning language that seemed intended to belittle the opposition rather than inform the Guyanese people in a balanced manner. Examples of titles include: “Opposition alliance unprincipled, vindictive” (May 9, 2012); “Opposition’s Motions in Parliament reek of unpatriotic sentiments,” (May 16, 2012); and “Motion to remove Gov’t Minister is impotent and misconceived” (July 31, 2012). Moreover, while government ministers and MPs were frequently quoted—usually as attacking the opposition—the views of APNU and AFC were virtually never included, despite the fact that the releases in question primarily concerned actions of the opposition.

As a politically neutral organisation, IPI takes no position on the views or positions of a particular party; however, it strongly believes that state and public media should represent the views of all political actors in a fair and balanced manner. Citizens in a democracy have a right to unfiltered information about those who rule in their name.

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<sup>23</sup> [www.oas.org/en/iachr/expression/showarticle.asp?artID=921&IID=1](http://www.oas.org/en/iachr/expression/showarticle.asp?artID=921&IID=1)



During its visit, IPI also learned that certain private media that report critically on the government are publicly referred to and/or demeaned as the “opposition press”, a term, according to Johnson, that is used to describe any media house that “doesn't glorify the government.” This epithet is frequently perpetuated by state media, which “reacts harshly to defend the government when [the latter] is criticised by the private media,” one editor stated.

For example, in July 2011 the online news site Demerara Waves reported<sup>24</sup> that a New York-based Guyanese realtor, Edul Ahmad, was being investigated by U.S. authorities for an alleged mortgage fraud scheme that apparently targeted Guyanese immigrants.<sup>25</sup> The article stated that Ahmad was ‘closely associated’ with then-president Jagdeo and the PPP.

On the same day, the *Chronicle* released a story stating that the PPP “has once again noticed that the Demerara Waves website has now openly joined ranks with the pro-opposition media in their continuing onslaught against the PPP and PPP/C Government by spreading falsehoods and misinformation.”<sup>26</sup>

The lack of independent public media is particularly problematic in Guyana given its rugged geography, which already poses challenges for the free flow of information, independent or otherwise. Media owners and editors agree that most of the news they produce does not penetrate into the interior, largely due to high transport costs and insufficient infrastructure. However, they indicated that because of official funding and the government’s control over radio and television broadcasting, state media has a much wider geographical reach. This situation, of course, means that for many people in the interior, government broadcasts are the only source of information.

IPI was also troubled to hear that editors at state media had instructed their reporters not to join the Guyana Press Association (GPA) or attend any of its training sessions—“even though,” one representative noted, “the majority of media workers are with state media.”

Under CARICOM rules, national press associations serve as the accrediting agencies for journalists who would like to take advantage of the regional bloc’s freedom-of-movement provision. In Guyana, the GPA is responsible for issuing the required skills certificate that would allow a reporter to work in other CARICOM countries.

“Many state media reporters would like to join GPA so that they can get the skills certificate,” the representative explained. The few that do, she said, always insist: “Don’t tell my editor.”

### **Distribution of state advertising**

In 2006, the Guyanese government suddenly withdrew state advertising from *Stabroek News*, one of the country's most widely circulated independent newspapers. Official advertising was restored to *Stabroek* in May 2008, after 17 months, but almost completely withdrawn again in 2010. Prior to the dual withdrawals, state ads had accounted for 15 per cent of *Stabroek's* advertising revenue, according to its editor, Anand Persaud. He believes the government seeks to drive the paper out of business.

<sup>24</sup> [www.demerarawaves.com/index.php/Latest/2011/07/25/ppp-associate-ensnared-in-straw-mortgage-deals-being-electronically-monitored.html](http://www.demerarawaves.com/index.php/Latest/2011/07/25/ppp-associate-ensnared-in-straw-mortgage-deals-being-electronically-monitored.html)

<sup>25</sup> [www.nytimes.com/2012/01/09/nyregion/edul-ahmad-accused-of-defrauding-guyanese-immigrants.html?pagewanted=all](http://www.nytimes.com/2012/01/09/nyregion/edul-ahmad-accused-of-defrauding-guyanese-immigrants.html?pagewanted=all)

<sup>26</sup> [www.guyanachronicle.com/site/index.php?option=com\\_content&view=article&id=30950:ppp-condemns-irresponsible-politically-driven-reporting-by-demerara-waves-website-hostile-media](http://www.guyanachronicle.com/site/index.php?option=com_content&view=article&id=30950:ppp-condemns-irresponsible-politically-driven-reporting-by-demerara-waves-website-hostile-media)

An IPI review of state advertising patterns in Guyana reveals extreme inequalities in the way such advertising is distributed. As the table below makes clear, the state-owned *Chronicle* and the PPP-affiliated *Mirror* receive more than four times as much state advertising space as the so-called "opposition" papers *Stabroek News* and *Kaieteur News*.

Distribution of state advertising in Guyanese newspapers, measured in column inches

| Newspaper                             | 5 May 2013<br>(National<br>Holiday) | 12 May<br>2013 | 19 May<br>2013 | 26 May<br>2013<br>(National<br>Holiday) | Total<br><u>column<br/>inches</u> (4<br>days) | Sunday<br>Circulation<br>(self-<br>reported)* |
|---------------------------------------|-------------------------------------|----------------|----------------|---|---|---|
| <i>Chronicle</i><br>(state-<br>owned) | 1456                                | 2383           | 2392           | 2166                                    | <b>8397</b>                                   | 18,000  |
| <i>Mirror</i><br>(ruling<br>party)    | 697                                 | 814            | 944            | 792                                     | <b>3247</b>                                   | N/A   |
| <i>Guyana<br/>Times</i><br>(private)  | 213                                 | 735            | 320            | 313                                     | <b>1581</b>                                   | 20,000-<br>25,000                             |
| <i>Stabroek<br/>News</i><br>(private) | 147                                 | 652            | 195            | 153                                     | <b>1147</b>                                   | 19,800  |
| <i>Kaieteur<br/>News</i><br>(private) | 51                                  | 207            | 195            | 211                                     | <b>664</b>                                    | 37,000  |

Source: *Stabroek News* for IPI

\*All figures are self-reported; except for *Stabroek News*, figures have never been confirmed by external audits. Figures for the *Chronicle* have been disputed by observers, with some placing the actual circulation closer to 6,000.

As shown, these figures do not correlate with circulation numbers: the *Chronicle* has (according to its own estimate) one-half of *Kaieteur News*'s readership, yet receives on average 12 times as much state advertising. Such data certainly lend weight to accusations of deliberate discrimination in the distribution of official advertising, in order to punish certain newspapers for expressing their opinions. Speaking about the *Chronicle* and the *Mirror*, one editor said state advertising was a "back door subsidy because their circulation is low and they don't attract many ads from the private sector."

Principle 13 of the Inter-American Declaration of Principles on Freedom of Expression, promulgated in October 2000, clearly states:

"The exercise of power and the use of public funds by the state, the granting of customs duty privileges, **the arbitrary and discriminatory placement of official advertising** and government loans; the concession of radio and television broadcast frequencies, among others, **with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.** The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression." (*emphasis added*)

### **Direct intimidation of the press**

The Guyanese press, particularly the independent press, has on numerous occasions been the victim of direct acts of intimidation, although the situation has improved slightly since Donald Ramotar took over the presidency from Bharrat Jagdeo. Jagdeo had, among

various incidents, referred to journalists as “carrion crows” and “vultures”; compared certain Guyanese media to media in Rwanda that had allegedly instigated that country’s 1994 genocide; and banned current GPA president Gordon Moseley, then a reporter for Capitol News, from the Office of the President.

While verbal assaults—including the “opposition press” epithet—are common in Guyana, physical violence against journalists in Guyana appears to be rarer but nevertheless remains a concern. Last August, IPI condemned the beating of *Kaieteur News* reporter Freddie Kissoon, who was also the subject of a disturbing 2010 incident in which a bucket of human waste was thrown in his face. Kissoon is a well-known critic of the PPP, and is currently the defendant in a civil-libel suit brought by Jagdeo.

Media practitioners also told IPI that the government has in the past brought in security officers to intimidate “hostile media” at government press conferences and prevented reporters from such media from asking questions. Others claim that, in some newspapers friendly to the government, ghost writers are hired to send letters to the editor that contained vicious verbal attacks on the “opposition press” or opposition political figures.

Overall, the relationship between the government and the private press in Guyana is marked by high levels of hostility and mistrust. IPI believes that this situation could be improved by increased dialogue between journalists and public officials about the role of media in a democracy, something IPI has consistently promoted throughout its 60-year history. Such a dialogue could help increase understanding that it is the media’s *job*—not necessarily the fruits of any particular animus—to critically watch over government actions.

### **Freedom of information and investigative journalism**

In Sept. 2011, the Guyanese Assembly passed the Freedom of Information (FOI) Act, after years of government promises and pressure from international bodies such as the OAS.

While the Act absolutely constitutes a positive step toward increased transparency, several deficiencies were noted. Most prominently, it does not apply to the president, a commission of inquiry issued by the president, or a “public authority or function of a public authority as the president may, by order, subject to negative resolution of the National Assembly, determine”<sup>27</sup>. Such overly broad exemptions are out of step with international standards on right-to-information legislation.

There have also been serious delays in the implementation of the law’s terms. Indeed, it was not until May 2013, three weeks after IPI’s visit, that the government named an information commissioner, former attorney general Charles R. Ramson, who will be responsible for overseeing information requests government-wide. IPI welcomes the appointment, but is concerned that housing the Commissioner’s office in the Office of the President could affect the independence of the FOI regime.<sup>28</sup> In any country, it is critical that the FOI commissioner work in the service of the public, not of the government.

IPI also urges the Guyanese government to provide the Commissioner with the legally mandated “requisite staffing and budgetary support” needed to carry out his functions.

The most commonly cited reason IPI encountered for the lack of progress in setting up the necessary FOI structures in Guyana was the high cost. IPI understands the genuine concerns about the expense, but nevertheless believes that having an effective FOI

<sup>27</sup> [freedominfo.org/documents/Guyanalaw2011.pdf](http://freedominfo.org/documents/Guyanalaw2011.pdf)

<sup>28</sup> [www.guyanatimesgy.com/?p=15629](http://www.guyanatimesgy.com/?p=15629)

regime would give a much-needed boost to government transparency in Guyana: According to the 2012 edition of Transparency International's Corruption Perceptions Index, Guyana ranks 133<sup>rd</sup> in the world—in the Western Hemisphere, only Venezuela, Paraguay, and Haiti are viewed as more corrupt.

Guyanese journalists pointed to difficulties obtaining information from the government as one of the primary obstacles to doing their job well. "It is sometimes very difficult to get an official response by the newspaper deadline," one journalist noted, resulting in stories that contain—to the chagrin of the government later on—the viewpoint of one side only.

IPI reminds Guyanese officials that a democracy in which information is kept from the public is an incomplete democracy. At the same time, IPI urges the media in Guyana to emphasise investigative journalism, which observers say is sorely lacking.



*From L: John Yearwood, Guyana Prime Minister Samuel Hinds, Alison Bethel McKenzie, and Scott Griffen at the Office of the Prime Minister, Georgetown, Guyana. Photo: IPI.*

"There are endless questions begging for investigation," Mike McCormack, co-president of the Guyana Human Rights Association told IPI. As an example, he cited the laying of a fibre-optic cable from Brazil to Guyana's coast as part of a government-led infrastructure update. McCormack said that the media had failed to ask questions about who was paying for the cable—and what those parties were getting in return.

Indeed, many individuals with whom IPI met spoke of the need for journalists to take a more critical approach to reporting, rather than, as some put it, simply accepting the government's account of events as given at a press conference. "Journalists have to realise that the government is not there as a demi-god," said one editor. "They need to understand that what the minister says isn't necessarily the truth."

One politician added that, as Guyana had a strong tradition of state ownership of the press, "people were trained to write for the state"—and not, he implied, necessarily for the public benefit.

When pressed on the issue, editors told IPI that limited resources and little specialist knowledge were significant impediments to investigative journalism. "I don't have time for investigative journalism," one reporter said regretfully. As in other countries in the region, where newspapers often must get by with small staffs and limited resources, editors are reluctant to send their reporters off to investigate, even for a few days. Journalists also pointed to the high costs of navigating Guyana's terrain to follow stories. In response to those concerns, IPI emphasised the economic payoffs of investigative journalism: people will pay to be well informed.

### **Training and media standards**

That good journalism is good business is also the message that IPI sought to impart on Guyanese owners and editors, many of whom have been criticised for failing to prioritise

training—and not just by politicians. During an editors' roundtable in Georgetown, one editor commented, "I am not seeing a commitment to training from some of the editors and publishers right here in this room."

As part of its visit to Guyana, IPI held a seminar on investigative journalism for a group of 15 reporters from various media houses, including state media. The Canadian International Development Agency (CIDA) graciously allowed IPI the use of its local space for the workshop, which was led by Bethel McKenzie.

While IPI's training was well attended, journalists' workshops led by other actors in Guyana are often not. For example, shortly before IPI's visit, USAID held a training on



*Alison Bethel McKenzie leads a workshop on investigative journalists in Guyana, hosted by the Canadian International Development Agency (CIDA). Photo: IPI*

covering LGBT (lesbian, gay, bi-sexual, and transgender) issues; but of the 25 journalists invited, just five attended. IPI urges editors to give their reporters the opportunity to attend any relevant trainings, which in the long run will serve to increase the quality and reputation of their papers.

Many political figures whom IPI met appeared

unenthusiastic about supporting increased freedoms for a press they viewed as untrained, sensationalistic, and politically motivated (one observer went so far as to call Guyanese reporting "a bit of a blood sport"). McCormack, of the human-rights association, told IPI that there was "enough breaking of standards that makes it difficult to make a case to the government in terms of press freedom."

While such a statement may not be untrue, IPI firmly believes that freedom of the press is prior to journalism ethics—put simply, the former should never depend upon the latter. Moreover, wherever it goes, IPI emphasises to journalists, editors, and publishers the importance of having a responsible, self-regulating press, not for the good of governments, but for the good of a country's citizens, who have a basic right to information that is fair, balanced, and, above all, accurate.

In this vein, IPI urges a strengthening the Guyana Press Association (GPA), which should more actively promote and, where possible, enforce journalistic standards. Furthermore, in order to protect the rights of all citizens from potential abuses by the press, IPI believes that a civil media regulatory body should be put into place, and urges the GPA to actively support its creation or even to transform itself into that body.

The Guyana Media Proprietors' Association, led by Robert D. Forrester III, has also spoken up on the importance of self-regulation, and this year released a position paper calling for the development of a broadcast code of conduct as well as a disciplinary committee to handle infractions of such a code.

## Recommendations

### For the government:

- Immediately begin a review of all outstanding broadcast license applications, including those filed before the Broadcast Act took effect
- Ensure that the granting of any new television and radio licenses is done transparently and under the guidance of an independent Broadcast Authority
- Reform the Criminal Law (Offences) Act to remove all references to libel or defamation, primarily Sections 110 - 144
- Reform the Criminal Law (Offences) Act to remove references to seditious libel, found in Section 321
- Transform any state media into public media that serve the interests of all Guyanese, not just those of the government currently in power
- End the alleged use of state media to intimidate or harass the private press or those who disagree with the government's positions or actions
- Ensure the independence of the Office of the Freedom of Information Commissioner, and provide this person with the necessary resources to do his job effectively; reform the FOI Act to remove or specify exemptions involving the Office of the President, in line with international standards
- Investigate thoroughly and without delay instances of violence against the press or media installations
- Ensure that state advertising is distributed fairly and without regard for the particular editorial stance of a newspaper

### For the media:

- Focus on producing content that is balanced and free of political bias; take care not to insert a political slant during the editorial process
- Invest in training to improve the quality of reporting and of investigative reporting in particular
- Strengthen the Guyana Press Association as a vessel for defending journalists' rights and safeguarding ethical standards
- Consider the creation of a sustainable self-regulatory body that can effectively handle citizen complaints regarding the media
- To state media, allow reporters to become members of the Guyana Press Association and to take advantage of any training programs offered by the GPA or other organisations
- Refrain from "envelope journalism," e.g., taking payment for attending press conferences or other news gathering meetings

## 4. Suriname

21 - 23 April 2013

### Mission Participants

- ❖ Alison Bethel McKenzie, IPI executive director
- ❖ Wilfred Leeuwijn, president of the Surinamese Association of Journalists (affiliate of the Association of Caribbean Media Workers)
- ❖ John Yearwood, IPI vice-chair and chairman of IPI's North American Committee; world editor of *The Miami Herald*
- ❖ Scott Griffen, IPI press freedom adviser for Latin America and the Caribbean

### Status of Criminal Defamation in Suriname

#### Background

Suriname's criminal-defamation laws, set forth in the Surinamese Criminal Code (orig. 1910, last updated 2004) (*Wetboek van Strafrecht voor Suriname*), carry the harshest penalties of any such laws in the Caribbean. The Code contains numerous provisions falling under the category of defamation and insult laws, and the following lists are by no means exhaustive.

Summary of Criminal Provisions related to Defamation:

- Defamation (*Smaad*), defined as knowingly harming another's honour and reputation by publicising a particular "fact" (Section 320): **Up to six months prison or fine**
- Defamation through writing or images (Section 320): **Up to 1 year prison or fine**
- Libel claimed as truth where no proof is presented (Section 321): **Up to 3 years prison**
- Insults not constituting libel or defamation (*belediging die niet het karakter van smaad of smaadschrift draagt*) (Section 325): **Up to 3 months prison or fine**
- False accusations (*een valse klachte*) harming honour of government officials (Section 327): **Up to 3 years prison**
- "Slandorous insinuation" (*lasterlijke verdachtmaking*), defamation falsely attributing crime to another person (Section 328): **Up to 3 years prison**
- Defamation of the dead (Sections 330): **Up to 3 months prison or fine**

Summary of Criminal Provisions related to Seditious Libel:

- Insult (*Belediging*) of head of state (Section 152): **Up to 5 years prison or fine, plus possible loss of certain civil rights**
- Distribution or display of document insulting head of state (Section 153): **Up to 1 year prison or fine**
- Insult of a representative in Suriname of a foreign country (Section 158): **Up to 4 years prison and fine**
- Insulting public authority in Suriname (Section 173): **Up to 2 years prison or fine**
- Insult of Surinamese flag (Section 176): **Up to 6 months prison**
- Public expression of enmity, hatred, or contempt (*vijandschap, haat of minachting*) toward government of Suriname (Section 171): **Up to 7 years prison or fine**

#### Recent application

In 2005, prosecutors opened a criminal defamation case against George Findlay, publisher of the newspaper *De West*, who was accused of defaming members of the

Suriname Currency Board. *De West* was also ordered to print a correction of the story in question in another paper, *De Ware Tijd*. A court ordered Findlay to be fined SR\$ 1,800 (€416) each day that the correction was not published.

*De Ware Tijd* refused to carry the correction, in order to show solidarity with *De West*. In 2006, the case was dropped by prosecutors.<sup>29</sup>

In 2007, a second criminal-defamation case was brought against Findlay, this time at the behest of Samuel Mehairdjan, a director at the Suriname Energy Corporation, who accused Findlay of attacking his reputation in *De West*. According to reports, the case was filed under Article 321 of the Surinamese Criminal Code.<sup>30</sup> As of April 2013, the case is officially listed as “postponed.”

### **Constitutional principles**

The Surinamese Constitution (*Grondwet van Suriname*, 1987) contains explicit guarantees for both freedoms of the press and of expression. Chapter V, Article 19 states: “Everyone has the right to make public his thoughts or feelings and to express his opinion through the printed press or other means of communication, notwithstanding everyone’s responsibility according to the law.”

Article 23 of the same chapter notes that such rights may be constricted in the case of war, danger of war, state of siege or state of emergency or for reasons of state security, public order and morality.

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## **Mission Findings**

Following a successful three-day mission to Suriname, IPI looks forward to working with the Surinamese government on a legislative package that would decriminalise libel and insult as well as institute self-regulatory mechanisms to oversee media standards in the country.

In meetings with the IPI delegation, Surinamese government officials expressed support for the revision of the country's defamation laws so long as the changes were accompanied by sustainable journalist training and a reliable avenue for citizens to voice complaints against the media.

“Journalists should not be jailed just for writing something that someone else doesn't like,” stated Dr. Jennifer Simons, speaker of the Surinamese National Assembly and a member of the governing party. “But there must be a balance: people need the power to defend their dignity.”

While she expressed frustration with what she viewed as the media’s tendency to sensationalise and, at times, “deliberately print lies,” Simons also admitted, “The problem with having jail as a possible punishment is that it can be abused, which is why we should go for a different route.”

Simons explained to IPI that she had personally been a victim of slander via the media. Specifically, IPI later found out, the *Times of Suriname* published an article in January

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<sup>29</sup> [service.cms.apa.at/cms/ipi/freedom\\_detail.html?country=/KW0001/KW0002/KW0029/](http://service.cms.apa.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0002/KW0029/)

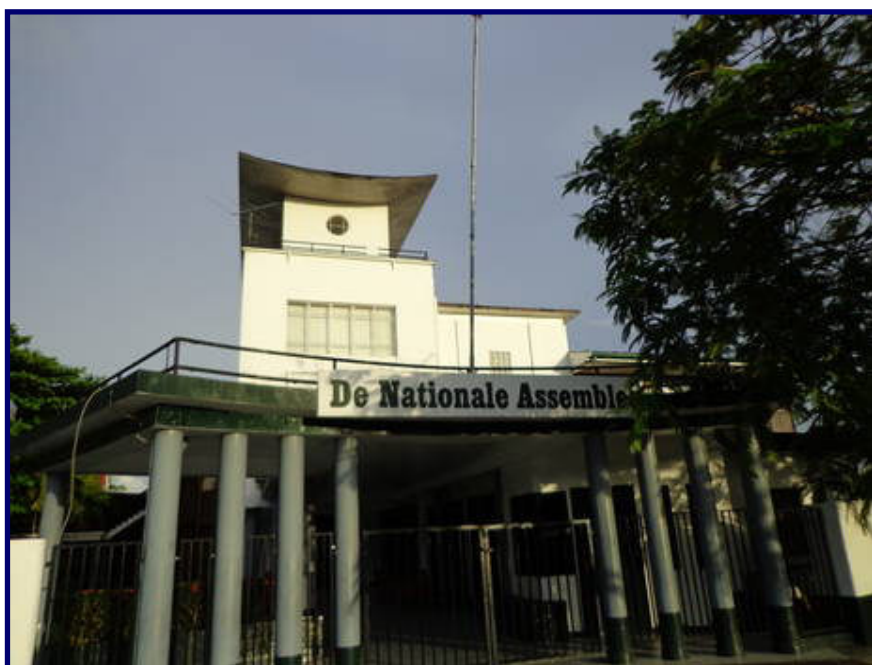
<sup>30</sup> [www.nickerie.net/News2007/2007-10-27-%20dwt%20-%20Strafvervolging%20hoofdredacteur%20De%20West%20blijft%20overeind.htm](http://www.nickerie.net/News2007/2007-10-27-%20dwt%20-%20Strafvervolging%20hoofdredacteur%20De%20West%20blijft%20overeind.htm)



2012 linking her husband, Glenn Geerlings, to fraud involving the country's postal service, Surpost. Simons sued and won the case; the *Times* was forced to run a correction stating that the story had been false.<sup>31</sup> She noted, however, that such errors could never be erased in the digital age (as she pointed out, the allegations about her husband—without the correction—can still be found on the Internet).

IPI was also received by Vice President Robert Ameerali, who indicated his willingness to work with IPI on criminal defamation and other issues affecting the press. "There are many laws that need to be revised," Vivian Gordon, the permanent secretary in the office of the vice-president admitted. "Society is moving faster than the laws."

Members of both the government and opposition coalitions indicated their support for press freedom, but emphasised the need for increased training in media ethics and responsibility. "We want to update our legislation, but also work on the other side," commented one coalition MP. "We have to have some possibility of defending our rights."



*The Surinamese National Assembly, located on Independence Square, Paramaribo. Photo: IPI.*

Chandrikapersad Santokhi, the leader of Suriname's largest opposition party, told IPI: "We will be in support of any proposal that creates more freedom, more responsibility, and more professionalism in the press." But, he noted, "to create satisfaction, an integral package is needed." This package, he suggested, should include media training, a code of ethics, a self-regulatory system, and a stronger journalist association.

An opposition MP added: "Suriname is a country of

500,000 family members ... When the press is used to fulfil a personal agenda, what kind of mechanism is there to prevent that?"

"I was impressed by the seriousness with which the Surinamese government approached the issue of criminal defamation, and I am confident that there is an opening to work on comprehensive legislative changes that would also include a modern, civil-based press regulatory scheme to address concerns about media responsibility," said IPI Executive Director Alison Bethel McKenzie. "IPI is eager to use its international expertise to support the Association of Surinamese Journalists in presenting a broad set of recommendations to the National Assembly later this year."

<sup>31</sup> [www.nospang.com/index.php?option=com\\_content&view=article&id=17032:echtgenoot-dna-voorzitter-betrokken-bij-fraudezaak&catid=73:binnenland&Itemid=65](http://www.nospang.com/index.php?option=com_content&view=article&id=17032:echtgenoot-dna-voorzitter-betrokken-bij-fraudezaak&catid=73:binnenland&Itemid=65)

IPI supports the creation of a media self-regulatory body in Suriname, and believes that a strengthened Surinamese Association of Journalists could assume the role of such a body.

### **President Bouterse and the December Murders**

Any review of press freedom in Suriname would be incomplete without acknowledging the tragic events of Dec. 8, 1982, in which five journalists—Bram Behr, André Kamperveen, Lesley Rahman, Jozef Slagveer, and Frank Wijngaarde—were murdered at Paramaribo’s Fort Zeelandia, a military installation that, at the time, served as headquarters for the military rule (1980-1987 and 1990-1992) of Desiré Delano Bouterse.

The incident, known as the “December Murders” (*Decembermoorden*), in which 10 opposition activists were also killed, became an international topic of concern once again after Bouterse, in 2010, was elected president of Suriname by the National Assembly, receiving 36 out of a possible 51 votes. At the time, Bouterse was on trial for the December Murders. Bouterse has denied direct involvement, although several alleged witnesses, including Bouterse’s secretary and his former bodyguard testified that the former military leader personally oversaw the massacre<sup>32</sup>.

Bouterse reportedly said he would not interfere with his murder trial.<sup>33</sup> However, in 2012 the Surinamese Assembly passed an amendment to a 1989 law (*Amnestiewet 1989*<sup>34</sup>) that had granted amnesty to ‘criminal offences linked to the defence of the state’ between 1985 and 1989.<sup>35</sup> The 2012 amendment (*Amnestiewet 2012*<sup>36</sup>) expanded the amnesty period even further, to now encompass 1980 – 1992.<sup>37</sup> The move was necessary, according to the text of the 2012 law, to “promote national unity and further steady development of the Republic of Suriname.”<sup>38</sup>

Regrettably, President Bouterse was unable to meet with the IPI delegation. While IPI had expected the December Murders and the Amnesty Law to come up often in its conversations about press freedom, few politicians or journalists addressed the topic directly. In general, the attitude from various sectors of society appeared to be that while the Amnesty Law was unsavoury, it was necessary for the country as a whole to move forward.

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<sup>32</sup> [afp.google.com/article/ALeqM5ghnYTOkL4kfnAn290t\\_arDAVGqDO](http://afp.google.com/article/ALeqM5ghnYTOkL4kfnAn290t_arDAVGqDO)

<sup>33</sup> (Additionally, in 1999, Bouterse was convicted in absentia in the Netherlands on cocaine-trafficking charges. Interpol maintains an arrest warrant for him, though he is immune from extradition under Surinamese law.)

<sup>34</sup> [news.yahoo.com/suriname-lawmakers-adopt-amnesty-president-013834254.html](http://news.yahoo.com/suriname-lawmakers-adopt-amnesty-president-013834254.html)

<sup>35</sup> In 1992, the law was amended to cover offences between 1985 and 1992,

<sup>36</sup> 1989 law: [www.corteidh.or.cr/docs/casos/aloeboetoe/soesding.pdf](http://www.corteidh.or.cr/docs/casos/aloeboetoe/soesding.pdf)

<sup>37</sup> [www.starnieuws.com/index.php/welcome/index/nieuwsitem/9900](http://www.starnieuws.com/index.php/welcome/index/nieuwsitem/9900)

[m.starnieuws.com/index.php/welcome/index/nieuwsitem/10157/1](http://m.starnieuws.com/index.php/welcome/index/nieuwsitem/10157/1)

[www.amnesty.org/en/region/suriname/report-2013](http://www.amnesty.org/en/region/suriname/report-2013)

<sup>38</sup> It bears mentioning here that the 1989 law provides an exemption for “crimes against humanity.” Despite some international reports to the contrary, the 2012 amendment does not alter that exemption. As such, there has been some debate as to whether the December Murders rise to such a level. In 2005, the Inter-American Court issued a ruling (*Moiwana Village v. Suriname*, [www.corteidh.or.cr/docs/casos/articulos/seriec\\_124\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_ing.pdf)) related to the 1986 Moiwana massacre in which tens of Maroons (descendants of runaway slaves) were allegedly massacred by the Surinamese military. Assailing Suriname for what it called a “violent obstruction of justice,” the Court stated: “no domestic law or regulation including amnesty laws and statutes of limitation may impede the State’s compliance with the Court’s orders to investigate and punish perpetrators of human rights violations. If this were not the case, the rights found in the American Convention [on Human Rights] would be deprived of effective protection.” Both the Inter-American Commission on Human Rights and the UN High Commission for Human Rights ([www.un.org/apps/news/story.asp?NewsID=41770#.Ub7oR5zcsdU](http://www.un.org/apps/news/story.asp?NewsID=41770#.Ub7oR5zcsdU)) have publicly agreed that the events of Dec. 8, 1982 constitute a serious violation of the American Convention that, Suriname, as a party to the Convention, is required to investigate and prosecute, regardless of whether they meet any definition of “crimes against humanity.”

Coalition members of the National Assembly made oblique references to “challenges” for the media during the 1980s. “There were situations in the 80s that we don’t want to happen again,” one coalition MP stated. “We have no reason to believe that there are significant problems with press freedom in Suriname now.”

Indeed, the December Murders were not the only challenge facing the press during the Bouterse dictatorship. During this time, the only media officially allowed to operate were the state broadcaster SRS and the private daily newspaper *De Ware Tijd*, the latter albeit under heavy censorship. The night before the December Murders, the offices of several media, including the newspaper *De Vrije Stem* were destroyed in arson attacks.<sup>39</sup> One opposition MP told IPI, “The Bouterse incident weighs very heavily on journalists. Journalists know the past—they don’t want to be victims again.” He added: “It is hard to see that after 30 years the families of the victims still cannot get justice.”

Together with the world’s other leading press-freedom organisations, IPI believes that impunity for crimes committed against the media sends the terrible message that the media is not worth protecting.

Numerous inter-governmental bodies and human-rights groups have expressed dismay over the 2012 Amnesty Law. In response to the law’s passage, the Inter-American Commission on Human Rights declared: “[L]aws that seek to leave serious human rights violations in impunity are incompatible with inter-American human rights obligations.”<sup>40</sup>

José Miguel Vivanco, Americas Director at Human Rights Watch, added: “These international crimes are too serious to be amnestied and forgotten. Bouterse’s self-amnesty blocks justice for gross human rights violations, which Suriname has the obligation to investigate and prosecute.”<sup>41</sup>

Overall, journalists and editors with whom IPI spoke indicated that the election of Bouterse as president had not had a noticeable impact on press freedom in Suriname. “We expected more pressure from Bouterse,” commented Nita Ramcharan, editor of *Starnieuws*, an online publication. “But we don’t know how the next two years will be.”

The problems that the Surinamese press have with the authorities, she added—such as the failure of officials to make themselves available to the press or the withholding of government advertisements—“are not unique to this government, but come with every government here.”

IPI learned that the Bouterse government has spent large amounts of money on public relations, ostensibly in order to burnish the government’s image (hurt by the backlash to the Amnesty Law). It was estimated that around 50 people were in the government public relations department—many of them former journalists wooed by higher pay.

### **Self-censorship and investigative journalism**

IPI arrived in Suriname one day after the United States Department of State released its Country Reports on Human Rights Practices for the year 2012. With respect to press freedom, the report on Suriname stated, “Some media members continued to practice self-censorship in response to pressure applied and intimidation by senior government

<sup>39</sup> [www.surinaamsepers.net/uitgelicht/vrijestem.php](http://www.surinaamsepers.net/uitgelicht/vrijestem.php)

<sup>40</sup> [www.oas.org/en/iachr/media\\_center/PReleases/2012/038.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/038.asp)

<sup>41</sup> [www.hrw.org/news/2012/04/18/suriname-revoke-amnesty-legislation](http://www.hrw.org/news/2012/04/18/suriname-revoke-amnesty-legislation)

officials or community leaders on journalists who published negative stories about the administration.”<sup>42</sup>

A number of editors and journalists told IPI they were mystified by the report’s findings: “Which journalists are they talking about?” was a common question heard by the delegation.

“I don’t know that word [self censorship],” Ramcharan stated. “I don’t see any self-censorship in three quarters of the newspapers here in Suriname.”

Despite this conviction, several observers commented to IPI on what they viewed as a significant lack of investigative journalism in Suriname. “There are stories here that simply aren’t picked up,” said one official, giving as an example the “enormous informal and illegal gold mining sector” allegedly causing “huge” environmental damage in Suriname’s interior. Other underreported sensitive issues included the influence of China, regional drug trafficking, and money laundering. “Is it self-censorship? Do the editors not want to go there? I just don’t know,” the official added.

IPI was told that when these topics are covered, it is generally in “bits and pieces” without hinting at what some called “the big picture.” Another difficulty cited by some was the lack of journalists with deep knowledge of a certain subject, for example, economics. “We need specialised journalists,” a coalition MP emphasised.

As the Surinamese government was described as “not particularly forthcoming” with information, IPI believes that the introduction of an effective Freedom of Information (FOI) Law could spur an increase in investigative stories.

In meetings with the IPI delegation, Surinamese officials indicated their support for such a law. “Citizens have a right to information and we must protect that right,” Dr. Simons stated. A number of regional countries, including Suriname’s neighbours Guyana and Brazil, have recently passed FOI legislation, in line with a growing trend in South America.

Speaking of freedom of information, it is worth noting here that the Netherlands, citing “the interest of the State”, has refused to release the results of an internal investigation detailing its alleged role into the 1980 coup that brought Bouterse to power. The Surinamese government and media on various occasions have demanded the information and been rebuffed.<sup>43</sup> IPI strongly regrets the Dutch government’s decision in this matter, which undermines efforts to increase transparency in Suriname itself.

Dr. Augustus Boldewijn, chair of the Democracy Unit at Anton de Koms University of Suriname, said that regulations on classified information needed to be reviewed—in the Netherlands as well as in Suriname. Dr. Boldewijn also had some strong advice for his country’s journalists: “A journalist is a researcher, a scientist ... you have to go out and get the information you don’t know.”

When asked about the purported lack of investigative journalism in Suriname, local journalists had a quick answer: “low pay, no time, no resources,” as one succinctly put it. Indeed, both editors and journalists alike placed the blame for “poor quality” journalism squarely on media owners, whom they accused of prioritising “quick news” at the expense of ethical standards and critical coverage of stories in the public interest.

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<sup>42</sup> [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

<sup>43</sup> [www.stabroeknews.com/2012/archives/04/12/netherlands-to-keep-suriname-coup-files-closed](http://www.stabroeknews.com/2012/archives/04/12/netherlands-to-keep-suriname-coup-files-closed)

“Media owners know that we have a passion and they abuse it,” one reporter said, noting that, due to small staff sizes, many journalists are expected to produce up to four stories a day on meagre salaries. Currently, the average monthly salary for a journalist in Suriname with five years’ experience is SR\$ 900 (€212). For comparison, the poverty level in Suriname for a family of three is SR\$ 1600 (€380). As noted above, low pay was cited as the leading factor in the exodus of journalists from the private sector into government public relations.

“Some owners,” one journalist stated, “are not themselves journalists and can’t see what quality journalism is.” Another observed that many reporters never completed their journalism education because they were unable to pay themselves and media houses do not invest in such programs. “Some owners ask why they should hire educated people to write the news when the news makes itself,” the journalist added, only half-jokingly.

IPI heard that the time constraints and high production demands made in-depth investigative reporting all but impossible. “We are not able to start a story one day and finish it a few days later,” one reporter pointed out. “There is not much time for research,” said another ruefully.

One well-placed observer summarised the concerns surrounding pay and time constraints: “These are excuses, but they are real excuses.”

A common observation heard from all sides was that the foreign press, particularly from the Netherlands, were far more active than local reporters in covering sensitive issues, such as mining. During an evening gathering in Paramaribo, Bethel McKenzie told Surinamese journalists that she was impressed by the vibrant and diverse media landscape in Suriname—despite its small size, Suriname boasts three independent daily papers, a number of online new sites, nearly 30 radio stations, one private television stations, and several state-owned broadcasters. Bethel McKenzie urged them to take responsibility for telling Suriname’s story to the world.

“I want to hear the news from my own people,” Dr. Boldewijn confirmed. But, he added, “Don’t just give me the surface [of the news] ... give me the fundamentals.”

### **Government pressure**

Most observers, national and international, seemed to agree that the Surinamese government generally respects press freedom and that, as discussed above, the biggest threat to the media was the media itself. But, as one foreign observer put it, the government “can definitely assert itself.” A local journalist added, “they [government] won’t take your press card, but they can make life difficult for you.”

One of the most serious allegations against the government involves the selective awarding of official advertising. “This government does not advertise in media whose articles they don’t like,” an opposition MP asserted.

IPI was told, for example, that the governments sends a weekly insert into two of the daily papers—*Times of Suriname* and *De Ware Tijd*—while a third newspaper, *De West*, does not receive it. *De West* is perceived as critical of the Bouterse administration and the president’s press secretary, Clifton Limburg, has accused *De West* of “insulting and falsely accusing authorities.”<sup>44</sup> Both *De West* and another paper, *Dagblad Suriname*, were at one point expressly excluded from government press conferences for several

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<sup>44</sup> [www.starnieuws.com/index.php/welcome/index/nieuwsitem/5545](http://www.starnieuws.com/index.php/welcome/index/nieuwsitem/5545)

weeks because, as one journalist put it, the government “was not content with articles in those papers.”

Journalists also noted that government ministers sometimes decline to give information to the media, and instead present the information on state television via the presidential press secretary. In some quarters, this practice was seen as a way for the government to keep tight control on how certain issues are perceived by the public.

Limburg hosts a daily television program, InfoAct, to promote the government’s activities. However, he also hosts a private radio program called Bakana Tori in which he has been known to fiercely defend the Bouterse administration against the media. “Every chance he [Limburg] gets, and every time the press makes some kind of mistake, he uses his program to intimidate the press,” one journalist said. Media representatives say it is not always easy for the public to separate Limburg’s official and private capacities, and that it can appear that the government endorses some of Limburg’s more bombastic statements regarding the press.

It also appeared that the role of the media may not always be fully understood by the Surinamese government. For example, at a media workshop jointly led by the SVJ and the Association of Caribbean MediaWorkers in January, Vice-President Ameeralli told the audience that, because journalists work to bring information to society, they are “in the service of the government.”

IPI reminds the Surinamese government that journalists serve only the Surinamese people, to whom journalists have an obligation to provide factual and balanced information, whether or not this information is to the government’s liking. IPI believes that this recognition is particularly important during a time in which the government appears to be pressing a platform of national reconciliation, including amnesty for actions committed in the past, and in which “there is some debate as to the wisdom of press freedom”, as one observer put it.

### **Training and media standards**

Politicians and media officials alike cited the need for increased training of journalists in Suriname and the need for the implementation of standards on ethics. Figures in both the opposition and governing coalitions criticised the media for “fulfilling personal agendas” and trafficking in sensationalism. “Good news doesn’t sell—sensation sells,” a coalition MP said. “But you cannot build a healthy community on sensationalism.” Despite these sentiments, IPI encountered few calls for state regulation of the media.

In her 2012 report on the situation of the press in Ecuador, then-IPI press freedom adviser for Latin America and the Caribbean Mariela Hoyer Guerrero succinctly summarised IPI’s position on the promotion of media standards:

“Undoubtedly, the exercise of journalism must be subjected to ethical principles, which should be agreed upon within the media industry. Press councils, ombudsmen, and internal statutes are examples of self-regulation mechanisms used successfully in some countries. IPI does not have a preference for any one of these options in particular, as it believes that the media in each country should establish their own mechanisms. What IPI does promote is the existence of a self-regulatory scheme that not only attempts to guarantee greater balance and accuracy in content, but also prevents state interference in the media.”

IPI looks forward to working with the SVJ and its members to promote the development of a self-regulatory scheme that fits the Surinamese context. IPI also plans to include

Surinamese journalists in a pan-Caribbean journalist training program that it hopes to inaugurate later this year.

Media representatives also indicated that key to improving media standards in Suriname will be strengthening the Academy for Arts and Cultural Education (*Academie voor Hoger Kunst- en Cultuuronderwijs*), the country's leading journalism college, with which IPI hopes to liaise as part of its future work in Suriname.

Some journalists criticised the Academy for what they viewed as a lack of emphasis on investigative journalism. "Their main purpose is to train journalists, but they seem to deliver a lot of PR officers," one complained. Dr. Simons, the assembly speaker, added that the government should provide more financial support to journalism schools as a way of promoting responsible reporting.

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## Recommendations

### For the government:

- Prioritise a reform of the Surinamese Criminal Code to remove all references to criminal defamation and insult, including those dealing with insult of the state or state symbols
- End the reported use of government advertising as a tool to punish critical media
- Pass and implement, as soon as possible, a freedom of information law that adheres to international standards on access to information
- Grant all media houses, regardless of perceived political stance, equal access to government press conferences and government advertising
- Honour international commitments related to the prosecution of serious human rights violations
- Support publicly the media's role as an independent government watchdog

### For the media:

- To owners, invest in training (including ethics training), resources, and appropriate salaries to improve the quality of reporting
- Provide institutional support for, and training in, investigative journalism
- Strengthen the SVJ as a vessel for defending journalists' rights and safeguarding ethical standards
- Consider the creation of a sustainable self-regulatory body that can effectively handle citizen complaints regarding the media
- Refrain from "envelope journalism," e.g., taking payment for attending press conferences and other news gathering meetings

## 5. Dominican Republic

25 - 29 April 2013

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### Mission Participants

- ❖ Alison Bethel McKenzie, IPI executive director
- ❖ Aurelio Henríquez, president of the Dominican Republic Association of Journalists (*Colegio dominicano de periodistas*)
- ❖ John Yearwood, IPI vice-chair and chairman of IPI's North American Committee; world editor of *The Miami Herald*
- ❖ Scott Griffen, IPI press freedom adviser for Latin America and the Caribbean

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### Status of Criminal Defamation in the Dominican Republic

#### Background

Wide-reaching laws against defamation remain on the books in the Dominican Republic, though there have been significant advances made in draft reforms (*see below*). In general, punishment for offences committed against public or state figures remains higher than for those against private individuals.

Statutes governing defamation in the Dominican Republic are set forth in two places: the Penal Code of the Dominican Republic (*Código Penal*) and Law No. 6132, on the Expression and Diffusion of Thought (*de la Expresión y Difusión del Pensamiento*), colloquially known as the Press Law (*Ley de Prensa*). While the Penal Code enumerates laws against defamation generally, Law 6132 specifically regulates publications and the operations of the media and therefore deals with defamation that arises through channels of public communication.

Dominican Republic laws generally refer to two offences under the umbrella of defamation: *difamación* (defamation) and *injuria* (insult). Both legal sources define the two terms similarly. Defamation is considered to be allegations or accusations that affect the honour or reputation of an individual or institution, including allegations in the form of doubts or allusions if it is clear to whom they refer. *Injuria* is constituted by insults and expressions or scorn or invective when these are not accompanied by specific accusations.

*Desacato*, which is defined by the Organization of American States (OAS) as language that offends, insults, or threatens a public official in the performance of his or her official duties, is explicitly legislated in Section 4 of the Penal Code. However, it bears mentioning that, in addition to the *desacato* provisions, both the Penal Code and Law No. 6132 consistently and sharply differentiate between offences committed against private persons and those committed against public or state authorities.

The **Law on the Expression and Diffusion of Thought (Law No. 6132)** refers to a) speeches, declarations, threats in public places, regardless of the medium of distribution b) written or printed media that is sold, distributed, or displayed in public areas c) posters, edicts, or other form of visual or written propaganda d) film or other cinematographic material.

The law makes a distinction between Crimes against the State (*Delitos contra la cosa pública*) and Crimes against Persons (*Delitos contra las personas*).



Crimes against the State include:

- Defaming the president (Article 26, **3 months to a year in prison with/or fine**)
- Publishing or reproducing false or falsely attributed documents (Article 27, **6 months to 2 years in prison**)
- Offending “good morals” (Article 28, **1 month to one year in prison plus fine**)
- Defaming the courts, the armed forces, national police, legislative chambers, municipalities and other state institutions (Article 30, **1 month to 1 year in prison, with/or fine**)
- Insulting the courts, armed forces, national police, legislative chambers, Cabinet members, congressmen, and any other state functionaries (Article 34, **6 days to 3 months in prison plus fine**)

Crimes against persons include:

- Defaming members of the Cabinet and legislative chambers, or individuals serving in official capacity (Article 31, **1 month to 1 year in prison, plus fine**)
- Defaming private individuals (Article 33, **15 days to 6 months in prison, plus fine**)
- Insulting private individuals (Article 35, **5 days to 2 months in prison, plus fine**)

Crimes according to the **Penal Code**:

- Defaming or insulting the president (Article 368; **3 months to 1 year in prison, plus fine**, plus the loss of certain civic and civil rights, including the right to vote and stand in elections, to exercise public office, to serve as a witness, etc.)
- Defaming or insulting members of Congress, Secretaries of State, Supreme Court judges, heads of state of friendly nations (Article 369; **1 to 6 months in prison plus fine**)
- Defaming private individuals (Article 371; **6 days to 3 months plus fine**)
- Offending the honour and sensitivity of administrative or judicial magistrates related to their public function (Article 222; **6 days to 1 year in prison**)
- Offending lawmakers or agents of public authority through words or gestures, with relation to those officials’ public function (Article 224, **fine of RD\$ 10 to 100**)

### **Recent application**

In 2011, Jose Agustín Silvestre de los Santos was arrested and accused of defaming La Romana provincial prosecutor José Polanco Ramírez after linking Ramírez to drug cartels. Silvestre was murdered in August 2011 while free on bail, and prior to a planned release on an exposé linking local businessmen to drug smuggling.

In January 2012, Johnny Alberto Salazar, a councillor for Nagua and journalist for Vida FM radio was convicted of libelling a lawyer, sentenced to six months in prison and fined RD\$ 1,000,000 (€18,200), hundreds of times the maximum allowed by law. In June 2012, an appeals court threw the verdict out, calling it “unfounded and contradictory.”

On Sept. 14, 2012, journalist Melton Pineda was convicted of defaming a fellow journalist and sentenced to three months in prison and a fine of RD\$ 100 (€1.83), and ordered to pay civil damages in the amount of RD\$ 50 million (€971,000). On Feb. 26, 2013, a three-judge panel of the Santo Domingo Court of Appeals overturned the verdict and ordered a new trial.

In Nov. 2012, the Canadian multinational textiles manufacturer Gildan Activewear agreed to drop criminal defamation and insult charges against two Dominican Republic journalists in return for a public statement from the two journalists, Genris García of vigilanteinformativo.com and Robert Vargas of ciudadoriental.org, declaring they had no

proof the company was involved in an alleged assassination attempt on journalist Diego Tórres last July and apologising for any “imprecisions.” IPI had vigorously opposed Gildan’s original suit, and contended that the article in question made legitimate references to Gildan.

### **IPI involvement and recent moves toward decriminalisation**

IPI conducted a fact-finding and advocacy mission to the Dominican Republic in June 2012.<sup>45</sup> Then, Dominican Republic politicians affirmed the importance of respecting freedom of the press, and agreed that journalists should not face prison time for their work. Moreover, members of the Chamber of Deputies invited IPI delegates to return to provide advice on redrafting its press law in line with international standards.

Since the 2012 mission, the IPI Secretariat has been an active observer in the drafting of the Dominican Republic’s new penal code. The first version of the draft, however, included harsher penalties for defamation and insult and maintained the distinction between public officials and private citizens.

After independently reviewing the bill, the IPI Secretariat began a public and private campaign to have defamation and insult excluded from the draft. In Nov. 2012, a letter from IPI was presented during a public hearing of the Chamber of Deputies Justice Commission. As a result of this advocacy, the Justice Commission in March 2013 officially removed all prison penalties for defamation from the draft penal code.

However, the draft maintains the possibility of criminal fines for defamation, up to 10 times the monthly salary of the defendant. On June 25, 2013, the Chamber of Deputies passed the draft criminal code by a vote of 122-2.<sup>46</sup> The bill will now be considered by the Senate.

At the time of IPI’s visit, legislators and media officials were planning to create a new “communications code,” which would include a reformed Law 6132 as well as new or revised legislation governing telecommunications and audiovisual/electronic media. IPI was invited back to advise on changes to Law 6132 during the April 2013 mission.

In a separate development, in February 2013, a group of prominent Dominican Republic owners and editors launched a constitutional challenge to criminal defamation provisions included in the current Penal Code and Law 6132. At the time of this writing, the Constitutional Court had yet to produce a ruling.

However, IPI’s trip coincided with another significant legal controversy surrounding Law 6132. On April 17, 2013, the Supreme Court of Justice struck down Article 46 of the statute, which had established newspaper editors as the primary (financially) responsible party in defamation cases<sup>47</sup>. The Court’s decision came at the request of Osvaldo Santana, editor of the newspaper *El Caribe*, who had been sued by former

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<sup>45</sup> Read the 2012 Dominican Republic Mission report here: [www.freemedia.at/fileadmin/media/Documents/IPI\\_mission\\_reports/Dominican\\_Republic\\_Mission\\_Report.pdf](http://www.freemedia.at/fileadmin/media/Documents/IPI_mission_reports/Dominican_Republic_Mission_Report.pdf) (ENG) ;

[www.freemedia.at/fileadmin/media/Documents/IPI\\_mission\\_reports/Informe\\_Final\\_Rep%C3%BAblica\\_Dominicana.pdf](http://www.freemedia.at/fileadmin/media/Documents/IPI_mission_reports/Informe_Final_Rep%C3%BAblica_Dominicana.pdf) (ESP)

<sup>46</sup> [www.listindiario.com.do/la-republica/2013/6/25/282084/Diputados-aprueban-en-dos-lecturas-proyecto-modificacion-Codigo-Penal](http://www.listindiario.com.do/la-republica/2013/6/25/282084/Diputados-aprueban-en-dos-lecturas-proyecto-modificacion-Codigo-Penal)

<sup>47</sup> The structure set up by Article 46 is known as the “waterfall” (*cascada*) system of responsibility, as editors and publishers hold primary responsibility; in their absence, the authors of the articles in question; in their absence, the printers, and so on down to sellers and distributors.

president Hipólito Mejía, for reprinting allegedly defamatory comments about Mejía made by a senator, Wilton Guerrero.

Some media interpreted the ruling to mean that newspapers could not be held liable for printing libellous content by third parties, when in fact it would only release *editors* from this liability. Additionally, the president of the court, Mariano Germán Mejía, later clarified that the ruling only applied to the Santana case and did not, in fact, strike down Article 46. That decision would have to be made by the Constitutional Court, which is currently reviewing the article in question.<sup>48</sup>

The Dominican Republic Association of Journalists (CDP) strongly objected to the Supreme Court ruling, arguing that the burden of responsibility in defamation cases could not be allowed to fall solely on journalists. The CDP contends that such a situation would lead to a higher level of self-censorship, as journalists would be increasingly concerned about becoming the targets of lawsuits.

The CDP informed IPI that while editors and journalists were in agreement on the need to abolish criminal defamation, there was significant disagreement on who should be responsible for libellous content.

IPI believes that while journalists should be held accountable for their actions, editors also share in responsibility as, in theory, they review all content. IPI understands that, for various reasons, Dominican editors do not see all articles, but views this primarily as an institutional rather than a legal issue. Journalists say there is also a problem with editors altering the tone of articles before publishing, in which case, they say, it would be unfair to blame a journalist for a defamatory statement inserted by an editor.

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## Mission Findings

### Criminal defamation

In the Dominican Republic, IPI sought to build on the successes of the June 2012 mission, while also focusing on training as a key aspect of strengthening the country's media.

On this visit, IPI found a clear consensus among government officials that criminal defamation laws were antithetical to press freedom and should be repealed.

The IPI delegation was received by a joint session of the committees of justice and communications of the Dominican Republic Chamber of Deputies. Deputies present expressed strong support for IPI's work in the country as well as a resolute commitment to revising Law 6132, following the modifications to the draft penal code discussed above.

The president of the justice commission, Demóstenes Martínez, explained to the IPI delegation that the Chamber viewed the revisions as obligatory to comply with rulings of the Inter-American Court of Human Rights on freedom of expression. In particular, Martínez cited the case *Herrera-Ulloa v. Costa Rica* (2004)<sup>49</sup>, in which the Court vacated the criminal defamation conviction of a Costa Rican journalist and asked the Costa Rican government to amend its criminal defamation and insult laws.

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<sup>48</sup> Numerous journalists also hinted at political overtones to the case, noting that *El Caribe* was the only newspaper to publish Guerrero's comments, which were widely derided as false and, indeed, defamatory.

<sup>49</sup> [corteidh.or.cr/docs/casos/articulos/seriec\\_107\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_107_ing.pdf)

IPI presented the deputies with a legal analysis of Law No. 6132 that contained specific recommendations on how to adapt the statute to international standards. The analysis was prepared by Dr. Anthony Fargo, director of the Center for Media Law and Policy Studies at Indiana University (United States).

At a separate meeting held at the presidential palace in Santo Domingo, Attorney General Francisco Domínguez Brito added: “We are very enthusiastic, and I believe that you will have good news soon.” The attorney general was joined in the meeting by Henry Molina, vice-minister of the presidency.



*Sen. Arístides Victoria Yeb gestures during a meeting with the IPI delegation in Nagua, María Trinidad Sánchez province. Photo: Genris García for IPI.*

Political backing for modifying Law 6132 was not confined to the capital. IPI received a warm welcome from national and local officials in the province of María Trinidad Sánchez, in the northeastern part of the country.

“We are very grateful for your presence here,” Gov. Francisco José Peña Cabrera told IPI delegates during a reception held in the provincial capital, Nagua. “We want to recognise your efforts to normalise the work of journalists and to make sure that the laws correspond to that work.” It was in Nagua where journalist Johnny Alberto Salazar was sentenced to six months in prison for defamation in 2012, a verdict later overturned on appeal.

The governor's comments were echoed by Nagua city officials as well as Commander Sotero Martínez Magallanes of the Dominican National Police. IPI was then invited by the governor to join in a ‘toast to press freedom.’

At a separate meeting in Nagua, IPI met with Senator Arístides Victoria Yeb and Deputy José Luis Cosme Mercedes, both of whom represent the province in the national Congress.

Speaking to IPI and representatives of the Association of Dominican Journalists, Cosme announced: “We have decided to decriminalise defamation. All those who feel wounded by the media will be able to go to civil court, but not criminal.”

Both the senator and the deputy expressed their desire to see Law No. 6132 altered to reflect modern democratic sentiments, noting that the statute reflected the values of authoritarian rule that had come to an end just one year prior to its promulgation.<sup>50</sup>

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<sup>50</sup> General Rafael Trujillo was the dictator of the Dominican Republic from 1930 until May 1961. Law 6132 was officially promulgated in Dec. 1962.

Nevertheless, Yeb added: “In the population there is a level of expectation and concern about what procedures a citizen could use when defamed.”

“We are thrilled that there is consensus to modernise Law No. 6132, which regulates the Dominican press, in order to satisfy international standards, including the decriminalisation of defamation and insult,” IPI Executive Director Alison Bethel McKenzie said, following the April mission. “The Dominican Republic government has recognised that criminal defamation laws do not belong in a modern democracy, and we hope that their leadership on this issue will encourage other countries in the Caribbean and Latin America to make and follow through on similar commitments.”

At the time of this writing, the Dominican Republic Chamber of Deputies was actively conducting a review of a draft bill to replace Law 6132. The draft bill removes all prison penalties for defamation, but preserves the possibility of fines, thus mirroring the proposed changes to the Penal Code.

Article 29 of the draft bill states: ‘Defamation—imputation or allegation—committed by any media ... is punishable, even when done conjecturally or when alluding to a person or institution not mentioned expressly, but which can be identified by the terms or images employed by the publication.’ Article 30 treats the crime of insult identically. Finally, Article 37 establishes the punishment for violation of these precepts: fines of between 15 and 100 times an offender’s monthly salary.



*Demóstenes Martínez, president of the Justice Commission of the Chamber of Deputies, and Nelson Guillén, president of the Media Commission, listen to IPI's arguments in favour of repealing criminal defamation during a meeting in Santo Domingo on April 25. Photo: Genris García for IPI.*

In general, IPI believes that these proposed reforms represent a significant step forward in terms of the country’s legal treatment of the press. Not only does the bill propose to end the jailing of journalists for defamation, but it also eliminates the archaic distinction between defamation of private individuals and public officials, and removes dubious references to offending “good morals.” Notably, the bill includes a clause punishing ‘attacks against freedom of expression’—including any physical violence or any act that hinders the work of journalists—committed by private citizens or agents of the state, with a prison sentence of up to two years.

Indeed, whereas Law 6132 reflected an authoritarian desire to control the press, the draft bill places emphasis on protecting the “freedoms of opinion, expression, investigation, and information” for the benefit of Dominican society and in accordance with international declarations on human rights.

The bill also proposes a “conscience clause” (Article 12) that grants journalists the right to challenge and hold civilly responsible editors and publishers who produce “a

substantial change in the news orientation or ideological line that harms the journalist's reputation or affects his principles and ethical, moral, and religious convictions." IPI believes that this clause could help to reduce the level of media politicisation in the Dominican Republic.

"It is highly commendable that this bill, instead of trying to criminalise the work of journalists, seeks to punish those who seek to hinder that work. We believe that these changes are a reflection of the Dominican Republic's increasingly modern approach to press freedom and we urge this spirit to be maintained as the bill advances," IPI Press Freedom Manager Barbara Trionfi said.

Because defamation could still be met with a criminal fine, the proposed changes to Law 6132 cannot be considered to fully "decriminalise" libel. Additionally, the proposed fines may be excessively punitive, particularly given the meagre salaries of Dominican journalists.

One argument given to IPI for the preservation of criminal fines for defamation was to provide poorer individuals with an accessible way to secure justice against the media. Lawyer fees, it was noted, can place civil litigation out-of-reach for many average Dominicans.

### **Colloquia and training**

As part of its visit, IPI held a series of colloquia across the Dominican Republic to explain the importance of decriminalising defamation and the types of alternatives available for voicing complaints against the press. These colloquia were held in Santiago de los Caballeros, San Francisco de Macorís, and Nagua, and were open not only to journalists and journalism students but also to interested members of the public. IPI believes that, as press freedom affects all citizens of a country, it is important to sensitise non-journalists about the role that the media plays in society and about the challenges that laws such as criminal defamation pose to that role.

The discussions on criminal defamation were led by Alberto Fiallo Scanlón, a noted attorney and legal expert. Fiallo Scanlón opened his lecture by describing the "clash of rights" (*choque de derechos*) between the right to free expression and the right to honour in the Dominican Constitution. He noted that the balance of this clash was different for private citizens than for public officials; the latter, by making a conscious decision to join the public sphere, necessarily expose their reputations and actions to increased scrutiny.

"People who choose to live a public life can't have the same level of protection from defamation," he argued. Fiallo Scanlón had previously defended Johnny Alberto Salazar, the journalist sent to prison for criminal defamation in 2012, successfully winning an appeal.

The colloquia included a seminar on ethical journalism led by Dr. María-Mercedes Vigón, associate director of the International Media Center at Florida International University, whose comments, given in Spanish, sought to empower journalists and journalism students to make ethical decisions in the newsroom.

Calling ethics "a process of reasoning" and employing specific examples of moral conundrums in the newsroom, Dr. Vigón encouraged reporters to consider the core values of their publication and apply these to their professional activity. "Independent journalism is the basis for a healthy democracy," she added in closing.

Dr. Vigón's participation in IPI's mission to the Dominican Republic was generously supported by a grant from the US Embassy in the Dominican Republic



From L: Aurelio Henríquez, Alison Bethel McKenzie, John Yearwood, Scott Griffen, and Mercedes Vigón speak at an IPI public colloquium on criminal defamation in Santo Domingo, Dominican Republic. Photo: Genrís García for IPI.

Also at the colloquia, Scott Griffen, IPI's press freedom adviser for Latin America and the Caribbean, presented on IPI's campaign to repeal criminal defamation, and answered audience questions about the current status of such laws in the Caribbean and Latin America.

In cooperation with the Colombian NGO Foundation for Press Freedom (*Fundación para la Libertad de Prensa*, or FLIP), Griffen also distributed copies of the "Manual for Journalists Charged with Libel and Slander," which was developed by FLIP.

### **Ethics and responsible journalism**

Promoting responsible journalism remains one of the highest priorities in the Dominican Republic not just among politicians, but also among editors and journalists themselves.

While Enmanuel Castillo, editor of the newspaper *La Información*, told IPI he did not think that journalists should go to jail, he also said, "what should be stressed in this debate is the need for more responsibility."

"Freedom of the press is not the same as freedom of thought," Castillo stated, explaining that while the latter is an innate right that should not be limited, the former must be accompanied by rules and regulations given the media's potential to do damage. He also contrasted the Dominican Republic with countries such as the United States, where, he said, "there is a media code of ethics that journalists obey."

At IPI's colloquia, a number of attendees linked the perceived lack of ethics to poor salaries. Others disagreed: "Low salaries don't give journalists a pass to act unethically," said one journalist at IPI's colloquium in Santo Domingo. "After all, editors don't always act ethically, and they get paid a lot more."

According to a 2011 study of salaries of Latin American journalists by Clases de Periodismo, 25 per cent of Dominican reporters earn less than \$US 500 (€390) a month; the other 75 per cent earn between \$US 500 (€390) and \$US 1,000 (€777) a month. Only in Bolivia and Cuba did journalists earn less overall.<sup>51</sup>

Several organisations in the Dominican Republic have developed codes of ethics for reporters, though some of these require updates, particularly to meet the demands of the digital age. The CDP published one such guide in 1994, which also sets forth regulations for a disciplinary tribunal for members who do not adhere to the guide's principles.

In Santiago de los Caballeros, IPI was received by Monsignor Ramón de la Rosa y Carpio, the city's influential archbishop. A former media practitioner himself, the Monsignor welcomed IPI's efforts to improve the conditions of journalists in the Dominican Republic, and supplied the delegation with a copy of his book *The Role of Ethics in the Media*<sup>52</sup>, published in 2009. In it, he calls the media "a gift to humanity" that must, however, be wielded with care and in accordance with basic moral duties.<sup>53</sup>

In addition to helping develop a journalist training program in the Dominican Republic, Bethel McKenzie also offered IPI's assistance in revising the CDP's code of ethics and/or creating a new ethics manual.

The question of responsibility was perhaps most eloquently addressed by Rafael Molina Morillo, editor of the newspaper *El Día*, telling the mission delegation: "A code of ethics is important to orient a journalist's moral compass, but each journalist also has to have a moral code inside of himself."

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<sup>51</sup> [www.scribd.com/doc/63503650/Encuesta-Lo-que-ganan-los-periodistas-en-America-Latina-El-Caribe-y-Espana](http://www.scribd.com/doc/63503650/Encuesta-Lo-que-ganan-los-periodistas-en-America-Latina-El-Caribe-y-Espana)

<sup>52</sup> [necc.gob.do/Publicaciones/ConferenciasMagistrales/Monse%C3%B1orBenitodelaRosaElPapeldela%C3%89tica/tabid/149/Default.aspx](http://necc.gob.do/Publicaciones/ConferenciasMagistrales/Monse%C3%B1orBenitodelaRosaElPapeldela%C3%89tica/tabid/149/Default.aspx)

<sup>53</sup> For example, speaking to journalists, he writes: "Do not lie (do not bear false testimony), for the journalist is a servant of the truth"; "Do not kill, not only physically, but also psychologically, morally, or spiritually."



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## Recommendations

### For the government:

- Conclude process of reforming the Penal Code and Law 6132 (on the Expression and Diffusion of Thought and the Penal) to modernise defamation law
- In both statutes, consider the complete abolition of criminal defamation, rather than the abolition of jail terms only
- Ensure the continued consultation of the media in the drafting of the new communications code, or any measure that involves the press

### For the media:

- Consider that improvements in journalists' salaries will help to limit conflicts of interest and increase independence by reducing the necessity to seek supplementary employment in government service or the temptation to take payment for attending press conferences or other meetings
- Focus on producing fair and balanced content that is devoid of political spin
- Emphasise investigative journalism
- Form/revise and adhere to ethical guidelines and internal self-regulatory processes that promote responsible journalism

## 6. Trinidad and Tobago

29 April – 1 May 2013

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### Mission Participants

- ❖ Alison Bethel McKenzie, IPI executive director
- ❖ Wesley Gibbings, president of the Association of Caribbean Media Workers (ACM)
- ❖ Kiran Maharaj, president of the Trinidad and Tobago Publishers and Broadcasters Association (TTPBA)

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### Status of Criminal Defamation in Trinidad and Tobago

Below is a summary of the current criminal defamation laws in Trinidad and Tobago.

*Criminal Defamation - Libel and Defamation Act (orig. 1845, last amended 1979)*

Summary of Criminal Provisions:

- False defamatory libel: **Up to 2 years prison plus fine of court's discretion**
- Malicious defamatory libel: **Up to 1 year prison plus fine**
- Defamatory libel: **Up to 1 year in prison and/or fine**

*Seditious Libel - The Seditious and Undesirable Publications Act*

Summary of Criminal Provisions:

- Seditious Libel and Libel with Seditious Intent, first offence: **Up to 2 years in prison and fine**
- Seditious Libel and Libel with Seditious Intent, subsequent offence: **Up to 5 years in prison and fine**
- Import of prohibited publications: **Up to 5 years and fine**
- Court may order suspension of newspapers and seizure of printing presses, in lieu or addition to other punishments

*Obscene Publication or Offence to Public Morality - Criminal Offences Act*

- Blasphemous Libel and Obscene Publication: **Up to 2 years prison**

### Recent Application

None

### IPI Involvement and Movement towards Decriminalisation

In 1996, the government published a green paper calling for the abolition of the Libel and Defamation Act, and for it to be replaced with a revised law that would include expanded defences in libel cases. Some sectors of the media opposed some of the reforms put forward and so the government researched further and put together the Defamation Bill in 2001.

The draft bill included the defences of absolute privilege qualified privilege, the defence of fair comment and the defence of triviality to prevent frivolous claims. It also included a clause that stipulated that information can be published if it can be proved that this

particular information is obtained from a reputable news agency. However in October 2001 the bill lapsed and no progress was made.

In June 2012, IPI held its World Congress in Port of Spain, Trinidad and Tobago, which was preceded by a two-week mission to the Caribbean that also included Trinidad and Tobago. At the closing ceremony of the Congress, Prime Minister Kamla Persad-Bissessar committed to reviewing her country's defamation laws.<sup>54</sup> In November 2012, the Prime Minister confirmed the government's intention to modernise the Defamation Act.<sup>55</sup>

In order to assist with the revision, IPI sent a report on Trinidad's criminal libel law to the Attorney General's office in February 2013. The report had been completed by the Center for International Media Law and Policy Studies at Indiana University (United States), and contained specific recommendations on how to bring the Libel and Defamation Act in line with international standards.

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## Mission Findings

IPI's visit to Trinidad and Tobago in April 2013 was prompted by two reasons: a) the need to follow up on efforts to decriminalise defamation and b) the need to engage with what IPI and its local members viewed as serious government efforts to intimidate the press.

### Criminal defamation

Following private meetings with high-ranking members of the Trinidadian government, Bethel McKenzie, Gibbings, and Maharaj held a joint press conference with Prime Minister Bissessar on Wed., May 1, 2013.

At the press conference, the prime minister announced that the Trinidadian cabinet would immediately approve a bill that would partially decriminalise defamation in the country. On May 3<sup>rd</sup>, the bill was delivered to Parliament, where, at the time of this writing, it continues to await legislative approval. IPI urges Parliament to take swift action to approve the bill.

Noting that criminal defamation had been repealed in England and Wales in 2009, the prime minister stated at the press conference, "This law has been on our books for too long. We believe that in any civilised society, committed to freedom of the press it does not so belong. And so like England, we too would seek to remove it from our books."

The bill would remove Section 9 from the Libel and Defamation Act, which punishes defamatory libel with up to one year in prison. However, both the prime minister and Attorney General Anand Ramlogan noted that there were no plans to remove Section 8, which punishes malicious libel known to be false with up to two years in prison. Additionally, seditious libel remains a criminal offence, with offenders facing up to five years behind bars, under the Seditious and Undesirable Publications Act.

In a statement following Cabinet's action, IPI Deputy Director Anthony Mills commented: "If this bill is passed, it would mark a significant improvement in laws affecting the media's work in Trinidad and Tobago. It is important to note, though, that any type of

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<sup>54</sup> [www.ttpba.org.tt/index.php?option=com\\_content&view=article&id=102:prime-ministers-speech-at-closing-ceremony&catid=1:latest-news&Itemid=50](http://www.ttpba.org.tt/index.php?option=com_content&view=article&id=102:prime-ministers-speech-at-closing-ceremony&catid=1:latest-news&Itemid=50)

<sup>55</sup> [www.stabroeknews.com/2012/news/regional/11/25/tts-defamation-laws-under-review-says-pm-2/](http://www.stabroeknews.com/2012/news/regional/11/25/tts-defamation-laws-under-review-says-pm-2/)

libel, even false malicious libel, can and should be dealt with solely by civil courts, as civil remedies would secure adequate and sufficient redress. We therefore urge Parliament to also consider the removal of Section 8 from the Libel and Defamation Act.”

### **Intimidation of the private press**

During a speech delivered to supporters of the ruling United National Congress (UNC) party on Mon., March 25<sup>th</sup>, 2013, Prime Minister Bissessar asserted that “rogue elements” in the country’s media were “either wilfully or unwittingly misinforming the society’ through negative coverage of the government”.<sup>56</sup>

The comments were widely interpreted by Trinidadian media officials as an attempt to intimidate the private press and silence criticism of the government. Moreover, since the close of IPI’s World Congress in Trinidad and Tobago in June 2012, IPI noted a troubling increase in government-led verbal attacks on the media. In support of the prime minister’s remarks to the UNC, National Security Minister Jack Warner declared that “too many negative things get too much of the spotlight.”<sup>57</sup> Last year, Warner was alleged to have led a campaign to discredit<sup>58</sup> a prominent investigative journalist by spreading insinuations about her private life, and to have threatened a prominent sports journalist with civil suit for covering Warner’s alleged embezzlement of FIFA aid money destined for Haiti.<sup>59</sup>

In Oct. 2012, IPI condemned as “highly inappropriate” personal e-mail messages sent to another well-respected journalist by Communications Minister Jamal Mohammed accusing the *Express* newspaper of being prejudiced against the ruling People’s Partnership and asserting that the media “have embarked on a sad journey to discredit and destroy.”<sup>60</sup>

In response to the prime minister’s remarks in March, Bethel McKenzie had noted: “In a democratic state such as Trinidad and Tobago, newspapers and broadcasters have the right to express their political opinions and report on the issues they—not those in power—deem newsworthy. We urge the Trinidadian government to end this pattern of ugly rhetoric seemingly intended to discredit the press.”

This message was the one the IPI delegation sought to highlight during meetings with Persad-Bissessar as well as Attorney General Anand Ramlogan. In addition to the alleged harassment of the media, topics discussed included:

- The need for legislation to protect whistleblowers and sources
- Proposed amendments to the Data Protection Act<sup>61</sup>, which seeks to limit the dissemination of personal data but could also, according to Trinidadian media, restrict the practice of journalism by keeping private information that is in the public interest. The proposed amendments seek to exempt the media from some of the regulations.
- The highly controversial plan, announced by Minister Mohammed in 2012, to compel all private radio and television stations to carry up to one hour of

<sup>56</sup> [www.freemedia.at/home/singleview/article/trinidad-pm-attacks-rogue-elements-in-countrys-media.html](http://www.freemedia.at/home/singleview/article/trinidad-pm-attacks-rogue-elements-in-countrys-media.html)

<sup>57</sup> [www.guardian.co.tt/news/2013-03-28/warner-media-only-about-negatives](http://www.guardian.co.tt/news/2013-03-28/warner-media-only-about-negatives)

<sup>58</sup> [www.freemedia.at/press-room/public-statements/americas-caribbean/singleview/article/in-trinidad-personal-attacks-on-investigative-journalists-raise-alarm.html](http://www.freemedia.at/press-room/public-statements/americas-caribbean/singleview/article/in-trinidad-personal-attacks-on-investigative-journalists-raise-alarm.html)

<sup>59</sup> [www.freemedia.at/index.php?id=288&tx\\_ttnews\[tt\\_news\]=6045&cHash=9532f4bc19](http://www.freemedia.at/index.php?id=288&tx_ttnews[tt_news]=6045&cHash=9532f4bc19)

<sup>60</sup> [www.freemedia.at/home/singleview/article/trinidad-communications-minister-uses-personal-e-mail-to-intimidate-media.html](http://www.freemedia.at/home/singleview/article/trinidad-communications-minister-uses-personal-e-mail-to-intimidate-media.html)

<sup>61</sup> [www.ttparliament.org/legislations/a2011-13.pdf](http://www.ttparliament.org/legislations/a2011-13.pdf)

government programming per day.<sup>62</sup> At present, broadcasters have not conceded to these demands and are airing, according to Maharaj, “what can be deemed as public interest material ... [but] at times the stations decide, which were supplied to the Minister in formal correspondence. Broadcasters have not adopted the schedule of 5 minutes an hour from 6 am to 6 pm” as was originally set forth by the Ministry.

- Proposed reform of the Telecommunications Act, in which market regulation is expected to be an issue

In general, IPI and local journalists were satisfied that the Trinidadian government heard their concerns and were willing to work to improve the situation of press freedom in the country as well as media/government relations. Maharaj, referencing what she called the recent “stormy weather” for the media, stated that the “the sunlight has peeped through.”

Both the prime minister and the attorney general emphasised their commitment to press freedom in Trinidad and Tobago and, in the attorney general’s words, highlighted ‘the strength of the independent media in Trinidad and Tobago and the vital role it played in the development of democracy in a free and fair society that is committed to the rule of law.’<sup>63</sup>

There were also discussions about media ethics. In announcing the proposed changes to the Libel and Defamation Act, the prime minister stated, “We remain hopeful that with the amendment to the legislation there would be the desire by journalists to do their part: a greater sense of professionalism and responsibility by journalists to first verify the facts before publishing a story.”

During meetings with the media, IPI also sought to reinforce the importance of responsible reporting. Additionally, in an editorial published regionally in early April, Bethel McKenzie urged journalists to uphold “fundamental standards of accuracy, fairness and balance.”<sup>64</sup>

IPI also sought to impart upon Trinidadian officials the danger of combative rhetoric toward the media. Prime Minister Persad-Bissessar commented during the IPI mission that “[r]obust discussion and even disagreement, criticism and consensus are the blood that flows through the veins of the free media. It [government criticism] must never be mistaken as an attack on press freedom but rather reflection and manifestation of that very free press.”

Nevertheless, it is also true that public attacks on the media by a head of government may have unintended consequences. Over time, such tactics can decrease the respect that the press enjoys in a society, which, in many parts of the world, fuels contempt and physical violence against the media at the hands of both government officials and private citizens. If a government does not tolerate and respect opposing viewpoints as voiced through the media, it cannot be expected that the public will either.

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<sup>62</sup> [www.freemedia.at/press-room/public-statements/americas-caribbean/singleview/article/trinidadian-broadcasters-requested-to-carry-government-content.html](http://www.freemedia.at/press-room/public-statements/americas-caribbean/singleview/article/trinidadian-broadcasters-requested-to-carry-government-content.html) ;

<sup>63</sup> [www.unctt.org/ipi-ms-alison-bethel-mckenzie-pays-courtesy-call-on-attorney-general/](http://www.unctt.org/ipi-ms-alison-bethel-mckenzie-pays-courtesy-call-on-attorney-general/)

<sup>64</sup> [www.trinidadexpress.com/commentaries/The\\_duty\\_of\\_journalists-201371641.html](http://www.trinidadexpress.com/commentaries/The_duty_of_journalists-201371641.html)

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## Recommendations

### For the government:

- Pass reform bill to the Libel and Defamation Act that would eliminate the crime of defamatory libel
- Consider the removal of Section 8 of the same act, which criminalises malicious libel known to be false, in accordance with international standards on the use of civil litigation to handle such cases
- Eliminate the crime of seditious libel through modification of the Seditious and Undesirable Publications Act
- End public, inflammatory rhetoric directed at media houses and journalists
- Reform the Data Protection Act to ensure an exemption for material in the public interest and the work of the media
- Pass legislation that would protect whistleblowers who divulge information in the public interest
- Ensure the involvement of the media in the debate and drafting of reforms to the Telecommunications Law
- Remove the Government Airtime Specification from the broadcasting concession agreement
- Ensure that a co-regulatory approach to regulation of the broadcast industry is maintained and enshrined in the Broadcast Code
- Send a clear message to all government officials that editorial pressure on media outlets, both private and state, will not be tolerated
- Fairly distribute government advertising to media, regardless of the perceived party loyalty of the news outlet

### For the media:

- Maintain high ethical standards as a tool to increase standing in public opinion
- Strengthen the Media Association of Trinidad and Tobago (MATT) to serve as a unified voice in matters pertaining to the media
- Establish a regulatory body to address concerns from the public, media, and government

## 7. Curaçao

2 – 5 May 2013

### Focus of Fact-Finding Visit

IPI Executive Director Alison Bethel McKenzie travelled to Curaçao in May 2013 to participate in a regional observance of World Press Freedom Day in the island's capital of Willemstad, at the invitation of the Curaçao National Commission for UNESCO. Bethel McKenzie delivered the keynote address at the event, which can be read later in this section. In this report, IPI seeks to give a brief overview of the press freedom situation in Curaçao, with particular focus on criminal defamation.

### Status of Criminal Defamation in Curaçao

*Note:* Curaçao is a constituent country of the Kingdom of the Netherlands, together with Aruba, Sint Maarten, and the Netherlands proper. Until 2010, Curaçao formed part of the Netherlands Antilles, which consisted of all the Dutch-speaking islands in the Caribbean. That year, the Netherlands Antilles was dissolved in a constitutional reform, with Curaçao, Aruba, and Sint Maarten gaining equal status within the Kingdom with the Netherlands proper. Bonaire, Sint Eustatius, and Saba became municipalities of the Netherlands proper.

#### Background

Defamation is a criminal offence in Curaçao under the island's new penal code (*Wetboek van Strafrecht van Curaçao*), which entered into force in November 2011.

Summary of criminal offences:

- Intentional insult of the king (Art. 2:27): **Up to 6 years in prison or fine**
- Distribution of material believed to be insulting of the monarch (2:29): **Up to 4 years prison**
- Libel with the intent to harm reputation (2:223): **Up to 6 months prison or fine**
- Libel or slander known to be false (2:224): **Up to 3 years prison or fine**
- Any intentional insult not consisting of libel/slander (2:226): **Up to 3 months prison**
- Libel or slander against public official in relation to public duties (2:227): **Above punishments are increased by one-third**

The penal code contains specific laws against incitement to crime or violence; religious blasphemy; incitement based on religion, race, sexual orientation, etc.

#### Recent Application

None known

#### Attempts to Reform Defamation Law

The penal code was rewritten after the dissolution of the Netherlands Antilles; however, laws on defamation were left unchanged.

### Mission Overview

On May 3<sup>rd</sup>, 2013, the Curaçao National Commission for UNESCO, in collaboration with the Ministry of Education, Science, Culture and Sport, Government of Curaçao, Curaçao

Media Organization, Association of Caribbean media Workers, Caribbean Broadcasting Union, Caribbean Media and Communication Institute, and The Commonwealth of Learning hosted a regional conference to mark World Press Freedom Day. IPI Executive Director Alison Bethel McKenzie was invited to give the keynote address at the event, the text of which can be found below.

The conference opened with an address by Rubina Bitorina, Curaçao's minister for education, culture, and sports, who drew parallels between press freedom and the abolition of slavery on the island 150 years prior.

"150 years ago, freedom of speech was limited and the majority language [Papiamentu] was limited. The press was not free or independent," she told the audience.

Pointing to what she called the "proliferation" of media outlets and points of view in Curaçao, Bitorina stated that the island had "surpassed some of those limitations." But, she added, while issues such as journalist safety, legal harassment of journalists, and impunity for crimes committed against the media "may seem to have more urgency in other places or times, these are issues that are very present in our own society and also in yours."



*From L:* Curaçao Education Minister Rubina Bitorina, Alison Bethel McKenzie, Caribbean Institute of Media and Communication Director Hopeton Dunn, and ACM President Wesley Gibbings listen to speakers at the Caribbean World Press Freedom Day Event in Willemstad, Curaçao. Photo: Curaçao National Commission for UNESCO.

The principal themes of the Curaçao event were the safety of journalists and the decriminalisation of defamation. Panellists,

consisting of leading Caribbean journalists and civil-society officials, discussed the following topics: "Safety of Journalists in Caribbean: Where are we and what should be done?"; "Decriminalizing of Defamation"; "Voices against impunity"; and "Online safety for journalists".

The World Press Freedom Day event was followed by a two-day Caribbean Media Summit, which Bethel McKenzie also attended. The aim of the summit was to determine a regional strategy to improve coverage and fight impunity, and included workshops for attending journalists on reporting elections, reporting natural disasters, and covering sustainable development.

Journalists in Curaçao complain of police arrests and abuse that they say occurs on a regular basis. In the first five months of 2013, some four reporters were arrested and abused, according to the Curaçao Media Organization.

The government is loath to provide information to reporters on its activities and writing about various issues and people is taboo, say journalists, including writing disparaging stories about Curaçao's lucrative tourism industry.



Media workers also report that many practice self-censorship because of retaliation. Investigative journalism, they say, is rarely practiced, with many media having a “close bond with politicians.” Many journalists on the island are not trained and, therefore, there is a great need for programs on investigative journalism, ethics, covering specialty beats, etc.

Merrill Sulvaran, a founder of The Curaçao Media Organization, said, there are multiple challenges facing the media in Curaçao, including the lack of a self-regulatory body, poor pay and a tendency to “gossip” rather than report the news. “In the Caribbean, we do not separate the difference between information, news and gossip.”

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## Recommendations

### **For the government:**

- Ensure that the role of the media is respected by all government entities
- Promote more transparency and open access to government information
- Bring to account policemen who abuse journalists
- Transform the state broadcaster into an independent public service broadcaster

### **For the media:**

- Obey the media code of ethics, striving to report fairly and accurately
- Distinguish between opinion and news when reporting and writing
- Report on all political parties evenly and fairly. Give equal opportunity to each political party to react to a story
- To owners, pay employees a better wage
- Establish a self-regulatory body

## Executive Director's World Press Freedom Day Address

Honorable Minister of Culture Dr. Rubina Bitorina, Marva Browne, Secretary General Curaçao National Commission for UNESCO; ladies and gentlemen; colleagues ...

I speak here today in a region whose sandy beaches, warm hospitality, and varied cultures are a magnet for tourists from around the world.

What most of them don't know is:

This is also a region in which criminal defamation laws are used to pressure journalists, and even send them to prison, like in the Dominican Republic.

This is a region in which journalists still die because of their job, like in Haiti, where in March an editor-in-chief was slain in a drive-by shooting by two masked men on a motorcycle. The murder followed threats.



*Alison Bethel McKenzie delivers the keynote speech at the Caribbean regional celebration of World Press Freedom Day, in Willemstad, Curaçao, May 3<sup>rd</sup>, 2013. Photo: Curaçao National Committee for UNESCO.*

It's a region in which, in one country at least - Cuba, more than a dozen journalists were jailed for years because of their critical views and when released, were forced into exile in Spain. Meanwhile, journalists are still being arrested, assaulted and intimidated. In one instance in 2012, a photojournalist was detained and, according to his wife, beaten beyond recognition.

It's a region in which government ministers use their personal emails to intimidate reporters.

It's a region in which governments are seeking to oblige broadcasters to carry a minimum amount of daily government content, and to leverage broadcast authorities to serve their own interests.

If we expand our geographical scope a bit to include Central and Latin America, we're confronted with the callous, sustained killing of journalists and a variety of other grave threats to the free media profession.

A total of 19 reporters - in Mexico, Brazil, Honduras, Colombia, Ecuador and Haiti - have been murdered so far in 2013 because of their profession.

In Honduras alone, 23 journalists have been killed since June 2009 when former president Manuel Zelaya was removed from power in what was widely considered to be a coup d'état.

Violence against journalists and impunity for those responsible also remains the norm in Mexico and Brazil, though the Mexican federal government has taken potentially critical steps to address journalist safety.

Ecuadorean President Rafael Correa has continued his verbal assaults on the country's private media and has emerged victorious in multi-million dollar libel cases against a prominent newspaper, *El Universo*, and the authors of the investigative book *Big Brother*. And in Argentina, *Clarín* continues its legal battle with the government over new legal ownership restrictions while President Cristina Fernández de Kirchner has stepped up public criticism of opposition journalists amid growing violence against the media.

Despite the challenges, though, and the grave press freedom transgressions we have documented in the region, there is hope:

In July, Grenada became the first Caribbean country to partially repeal criminal defamation after removing all references to criminal libel from its penal code. Grenada's Attorney General Rohan A. Phillip said his government had decided that "having criminal libel on the books is a formal hindrance to freedom of expression and of the press." Nevertheless, seditious libel still remains an offence for which journalists can be jailed.

The Dominican Republic has indicated that it plans substantial changes to the country's penal code reform bill, including the elimination of all criminal defamation and insult clauses. Government officials have said they intend to rewrite Law 6132, also known as the "Press Law", which provides prison sentences of up to one year for the defamation of certain political figures.

The urgent need for such reform was starkly highlighted in 2012 when two Dominican Republic journalists were sentenced to prison for defamation, though one conviction was later overturned on appeal. In November, Canadian multinational Gildan Activewear agreed to drop criminal defamation charges against a local journalist who had mentioned the company in connection with a murder investigation.

Trinidad and Tobago's prime minister, Kamla Persad-Bissessar, announced her commitment to modernising the country's defamation laws during a speech at IPI's 2012 World Congress there. While IPI warmly welcomed the move, we later expressed deep concern at a government plan to compel all private broadcasters to carry up to one hour of official programming per day, and at a public campaign led in part by high-ranking public officials to discredit investigative journalists Denyse Renne and Asha Javeed, who had uncovered a legal scandal that eventually led to the resignation of the country's justice minister.

In March 2013, the Jamaican government tabled the Defamation Bill, which would include the decriminalisation of libel.

Just the threat of criminal defamation charges can chill reporting and lead to self-censorship, so we don't hold much faith in assurances from some governments that criminal defamation laws, although on the books, will "never be used."

Criminal defamation laws are prone to abuse by prominent figures who seek to silence critical coverage in order to hamstring investigations into their wrongdoings, and thereby protect their economic or political interests, maintain power and, in some cases, even avoid criminal liability.

All 16 independent states considered geographically or culturally part of the Caribbean maintain some form of criminal defamation laws - including seditious and obscene libel laws.

These laws, largely inherited from European colonial powers, each provide a penalty of at least one year in prison. A number of Caribbean countries, including Antigua and Barbuda, Cuba, the Dominican Republic, Grenada, Haiti and Suriname, have actively applied these laws against the press. The examples set by these prosecutions, which have seen some journalists sentenced to prison, instils self-censorship in the media and thereby deprives the public of information on matters of public interest.

So while journalists are not being systematically killed, physically assaulted and imprisoned in the Caribbean with the same chilling regularity as in certain other regions of the world, criminal defamation and seditious libel legislation are an example of the serious challenges that remain with respect to journalists' right to exercise their profession freely.

I trust that in the months and years ahead we will continue to join forces to seek the abolishment of such laws, which are inimical to press freedom everywhere.

*Delivered Friday, May 3, 2013 in Willemstad, Curaçao on occasion of World Press Freedom Day 2013 at the invitation of the Curaçao National Commission for UNESCO.*

## 8. Resources

### **Criminal Defamation Laws in the Caribbean: A Legal Overview presented by the International Press Institute (IPI)**

| Country                        | Criminal Libel or Insult (Potential Prison Time§) | Seditious Libel or Desacato (Potential Prison Time§) | Recent Known Criminal Prosecution for Defamation ( <i>Most Recent</i> ) | Obscene Pub. or Offending Public Morality# (Potential Prison Time§) |
|--------------------------------|---|--|---|---|
| Antigua and Barbuda            | ✓ (3 years)                                       | ✓ (2 years*)   | ✓ (2005) / <i>Defamation</i>  | ✓ (fine only)   |
| Bahamas                        | ✓ (2 years)                                       | ✓ (2 years*)   | ✗   | ✓ (2 years)   |
| Barbados                       | ✓ (1 year)  | ✗  | ✗   | ✗   |
| Belize                         | ✓ (Not specified)                                 | ✓ (2 years*)   | ✗   | ✓ (2 years)   |
| Cuba                           | ✓ (2 years)                                       | ✓ (3 years)  | ✓ (2012) / <i>Desacato</i>  | ✓ (1 year)  |
| Dominica                       | ✓ (3 years)                                       | ✓ (6 months*)  | ✗   | ✓ (fine only)   |
| Dominican Republic             | ✓ (1 year)  | ✓ (1 year)   | ✓ (2012) / <i>Defamation</i>  | ✓ (1 year)  |
| Grenada                        | ✗   | ✓ (2 years*)   | ✓ (1999) / <i>Sed. Libel</i>  | ✓ (2 years)   |
| Guyana                         | ✓ (3 years)                                       | ✓ (2 years)  | ✗   | ✓ (2 years)   |
| Haiti                          | ✓ (3 years)                                       | ✓ (3 years)  | ✓ (2008) / <i>Defamation</i>  | ✓ (1 year)  |
| Jamaica                        | ✓ (3 years)                                       | ✗  | ✗   | ✓ (3 months)  |
| St. Kitts and Nevis            | ✓ (3 years)                                       | ✓ (2 years*)   | ✗   | ✓ (fine only)   |
| St. Lucia                      | ✓ (5 years)                                       | ✓ (5 years*)   | ✗   | ✓ (5 years)   |
| St. Vincent and the Grenadines | ✓ (2 years)                                       | ✓ (5 years*)   | ✗   | ✓ (9 months)  |
| Suriname                       | ✓ (3 years)                                       | ✓ (7 years)  | ✓ (2007) / <i>Defamation</i>  | ✓ (2 years)   |
| Trinidad and Tobago            | ✓ (2 years)                                       | ✓ (2 years)  | ✗   | ✓ (2 years)   |

Stand: July 2013

§ Refers to maximum potential punishment for first offence

\* Specifically criminalises insult or defamation of the monarch

# Refers only to laws specifically addressing obscenity in written publications or the press; there may be other provisions related to obscene language or behaviour generally

## **IPI Declaration of Port of Spain**

### ***Calling for the Abolition of ‘Insult Laws’ and Criminal Defamation Legislation in the Caribbean, and for the Support of Strong, Free and Independent Media***

The members of the International Press Institute (IPI), meeting at their 61st Annual General Assembly during the IPI World Congress from 23 to 26 June, 2012 in Port of Spain, Trinidad and Tobago,

Note that media outlets across the wider Caribbean may be subjected to a panoply of repressive measures, from jailing and persecution to the widespread scourge of ‘insult laws’ and criminal defamation, which are sometimes used by the powerful to prevent critical appraisal of their actions and to deprive the public of information about misdeeds,

State their conviction that the Caribbean urgently needs a strong, free and independent media to act as a watchdog over public institutions,

Consider that media freedom remains a key to the establishment of good governance and durable economic, political, social and cultural development, prosperity and peace in the Caribbean, and to the fight against corruption, poverty, violent crime and disease,

Reaffirm their commitment to media freedom as a basic human right as well as an indispensable part of democracy in every country, including those in the Caribbean,

Note that Article 19 of the Universal Declaration of Human Rights guarantees freedom of expression as a fundamental right, and emphasise that freedom of opinion and expression are essential to the realization of other rights set forth in international human rights instruments,

Observe that the struggle to attain full media freedom continues in the Caribbean, and that journalists in some countries face the threat of murder, imprisonment, torture, censorship, publication bans and threats to their employment,

Recognise that these crude forms of repression are bolstered by the practice of deliberately excluding certain media from the placement of state advertising, by the burden of high import taxes on equipment and materials such as newsprint, by failure to pass and implement a Freedom of Information (FoI) Act by most countries, by putting undue political and financial pressure on media that invokes self censorship, and by the unfair effect on competition caused by state-owned media,

Identify the continued implementation of ‘insult laws’ – which outlaw criticism of politicians and those in authority and have as their motive the “locking up of information” – and criminal defamation legislation as a prime threat to media freedom in the Caribbean,

Declare that Caribbean states must respect their commitments pursuant to Caribbean and international instruments guaranteeing the freedom, independence and safety of the media,

Call on Caribbean governments as a matter of urgency to abolish ‘insult laws’ and criminal defamation legislation and common law criminal defamation rules, as well as review civil defamation laws and all other laws that restrict media freedom,

Urge Caribbean governments that have jailed journalists for their professional activities to free them immediately and to allow the return of journalists previously forced into exile,

Call on Caribbean states to promote the highest standards of media freedom in furtherance of the principles proclaimed in Article 19 of the Universal Declaration of Human Rights and international instruments, and to provide effective constitutional guarantees of freedom of the media,

Urge Caribbean media proprietors and professionals to promote and actively implement measures to ensure high editorial standards and to uphold ethical journalism,

Call on inter-governmental organisations to promote progress in media freedom in the Caribbean in the next decade by, among other steps, assisting media in the areas of legal defence, skills development and access to capital and equipment,

Welcome moves towards a global fund for Caribbean media development and recommend that such an initiative make media legal reform a priority, in particular the abolition of ‘insult laws’ and criminal defamation legislation,

Commit IPI to expanding its existing activities in regard to media freedom and development in the Caribbean in the coming decade.

\* \* \*

IPI makes this declaration from Port of Spain, Trinidad and Tobago, as an earnest appeal to all peoples of the wider Caribbean to recognise that the social progress they seek can only be achieved in a climate where the media is free and independent of governmental, political or economic control.

List of Endorsements to Date

Association of Caribbean Media Workers (ACM)  
ACM Focal Point, St Vincent and the Grenadines  
Antigua and Barbuda Media Congress  
Association of Surinamese Journalists (*Surinaamse Vereniging van Journalisten*)  
Barbados Association of Journalists  
Guyana Press Association  
Media Workers Association of Grenada  
Media Workers Association of St Kitts and Nevis  
Media Association of Saint Lucia  
Press Association of Jamaica  
Dominican Journalists Association (*Colegio dominicano de periodistas*)

WAN IFRA  
CPJ  
World Press Freedom Committee

## Terms and Definitions Related to Criminal Defamation

**Note:** The definitions below are general and meant to serve only as a basic guide. The exact meaning of a term in each country may vary, depending on the specific language used in a country's laws and courts' interpretation of that language.

**Defamation** - A communication (usually an allegation or accusation), either written or spoken, stating a fact that harms the reputation or honour of the subject of the communication, generally by identifying a negative character trait or course of action that exposes the subject to hatred, contempt or ridicule. The communication must be conveyed to at least one person other than the subject and the person the communication allegedly defames must be identifiable. In some cases, the communication may be a statement of opinion if the listener would assume that opinion is based on facts known to the speaker.

Overall, defamation laws in the English-speaking Caribbean differentiated among three categories, each dependant upon the intent of the speaker: intentional libel, reckless libel, and negligent libel. Intentional libel, the most serious of the three, implies malice on the part of the speaker. Reckless libel and negligent libel both indicate an inadequate regard for accuracy, but not necessarily malice. Significantly, for all of the above three categories, the truth of the statement in question is generally a limited defence.

**Criminal defamation** - Defamation addressed under a country's criminal laws. Depending on the jurisdiction, it generally requires a showing that an individual conveyed a statement knowing it to be false or without having any regard as to whether it is true or false, and did so intending to harm the subject's reputation or with reckless disregard for the subject's reputation. The truth of the statement is not a defence to liability in some jurisdictions. Importantly, actions for criminal defamation involve prosecution by the state and carry the potential imposition of criminal penalties.

**Civil defamation** - Defamation addressed under civil laws. Lawsuits between two or more private parties. Depending on the relevant law, such cases may require a showing of damages.

**Slander** - A defamatory communication expressed through the spoken word.

**Libel** - A defamatory communication expressed through the written word, which includes both print media and – in some cases, based on the wording of relevant laws – broadcast media.

**Desacato** - In the Spanish-speaking world, *desacato* (often translated as disrespect or contempt of authority) is a criminal offence that generally addresses defamation of or insults directed at a public official that occur in response to the official's exercise of his or her public functions.

**Insult (*injuria*)**: In the Spanish-speaking world, insults and expressions or scorn or invective when these are not accompanied by specific accusations



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## Protecting Press Freedom for More than 60 Years

More than 60 years after its founding, IPI continues to actively carry out its fundamental mandate of defending and strengthening press freedom around the world. Through press-freedom missions conducted around the globe, IPI seeks to transmit the concerns of local media to high-ranking government officials. IPI believes that only by convincing governments of the necessity of a free press can real change in the media environment occur.

In addition to the Caribbean, IPI has conducted missions this year to Mexico; Israel, the West Bank, and Gaza; and Jordan. In 2012, missions took place in Bangladesh, Nepal, India, Ecuador, Turkey, the Caribbean. In addition to succinctly presenting findings and offering substantive recommendations, IPI mission reports are also an important element of institutional transparency.

All available mission reports can be found on IPI's website:  
[www.freemedia.at/publications/mission-reports.html](http://www.freemedia.at/publications/mission-reports.html)

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*The views expressed in this report are solely those of the International Press Institute.*

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## Join Us!

Restrictions on a free press anywhere in the world are a threat to press freedom everywhere. By joining IPI, you aid your colleagues in need and add your voice to more than 1,000 publishers, editors, and journalists around the world concerned with preserving the right of journalists to do their jobs safely and independently.

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# Press

