



# International Press Institute

## **Final Report on the IPI Advocacy Mission to End Criminal Defamation in the Caribbean**

**Barbados, Dominican Republic,  
Jamaica, and Trinidad and Tobago  
9 – 21 June 2012**

**In cooperation with:  
The Association of Caribbean Media Workers (ACM)**



## 1. Introduction

### Background

In June 2012, the International Press Institute (IPI), in conjunction with its strategic partner, the Association of Caribbean MediaWorkers (ACM), conducted a two-week mission to Barbados, Jamaica, the Dominican Republic and Trinidad and Tobago as part of its wider campaign to end criminal defamation in the Caribbean.

The ultimate aim of the campaign is to push for the abolition of criminal laws currently in place in the Caribbean that concern defamation, slander, libel or insult. The campaign encourages the use of civil laws to address such concerns, in line with international press-freedom standards and the recommendations expressed by regional and international human-rights bodies.

Currently, all 13 independent states in the Caribbean have criminal defamation laws on their books that establish a penalty of at least one year in prison. Libel deemed seditious or obscene remains a separate offence in a majority of Caribbean countries and generally entails stiffer punishments, with prison sentences of up to five years in certain cases.

Particularly in the English-speaking Caribbean, many of the laws in place are near-exact replicas of colonial-era acts dating back to the mid-19<sup>th</sup> century. Lord Campbell's Act (also known as the Libel Act of 1843), which serves as the foundation for a number of defamation statutes across the Caribbean, was itself largely repealed in England in 2009.

Bucking a global trend, the Caribbean has witnessed active criminal libel prosecution over the past 15 years, with cases being brought recently in the Dominican Republic, Grenada and Antigua and Barbuda.

The four countries visited by IPI in June were strategically selected on the basis of their regional influence, demonstrated readiness for defamation reform or in response to immediate concerns about the application of libel law. The mission to Trinidad and Tobago coincided with IPI's 2012 World Congress held in Port of Spain from 23 -26 June.

The mission was premised on a domino theory by which individual successes are used to build momentum and place pressure on neighbouring countries to follow those positive examples.

In each country, IPI's advocacy efforts targeted representatives of government and law enforcement agencies, journalists and press freedom organisations, law and journalism faculties as well as civil society groups.

This experience reflected IPI's overall campaign strategy of building support in each Caribbean country via direct contact with political and media stakeholders to lobby on behalf of revisions or amendments to existing defamation laws, and through coordinated media coverage of visits and the placement of opinion pieces in local media.



IPI also seeks to remind the public of the danger of criminal defamation laws by highlighting their usage, mainly by prominent figures, to squelch critical coverage and investigations into alleged wrongdoings so as to protect their economic or political interests, maintain power and, in some cases, even avoid criminal liability.

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.

### Terms and Definitions

Note: The definitions below are general. 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, that harms the reputation or honour of the subject of the communication, generally by identifying a 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. Depending on the jurisdiction, the truth of the communication may or may not be a defence against liability.

**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 a country's civil laws. Such cases involve 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* ("contempt of authority") is a criminal offence that generally addresses defamation of, or insults directed at, a public official that occurs 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



## 2. Barbados 9-12 June 2012

### Mission Participants

- IPI Executive Director Alison Bethel McKenzie
- Association of Caribbean Media Workers President Wesley Gibbings
- IPI Press Freedom Adviser for Latin America and the Caribbean Mariela Hoyer
- IPI Executive Board Member Pavol Múdry

### Current Status of Criminal Defamation in Barbados

Criminal defamation in Barbados is principally **regulated by the Defamation Act of 1997**, itself a relic of British colonial rule. Though there have not been any recent prosecutions, Section 34 of the Act establishes punishments for **criminal defamation**, which may only arise from published or broadcasted material. Defence of comment and defence of privilege both apply. The section stipulates that the punishment for criminal libel is either a fine not to exceed \$2,000 or a prison term not to exceed 12 months. Prosecution for criminal libel cannot be brought without the prior approval of the Director of Public Prosecutions. Individuals can face criminal charges and a civil suit related to the same incident of alleged defamation.

The rest of the Defamation Act addresses **civil defamation** cases of which can arise “where a person publishes any matter by means of the whole or any part of which, the publisher makes an imputation defamatory of another person, whether by innuendo or otherwise.”

The Act provides provisions for defences of truth, triviality, and comment. The defence of comment limits the liability of the defendant when the alleged defamation concerns a matter of public interest.

Section 10 of the Act grants members of Parliament absolute privilege, relieving MPs of any liability for their discourse within their parliamentary role.

The **Constitution of Barbados** provides guarantees for freedom of expression. Under Chapter III (Protection of Fundamental Rights and Freedoms of the Individual), the Constitution asserts that “no person shall be hindered in the enjoyment of his freedom of expression” including the “freedom to hold opinions without interference, freedom to receive ideas and information without interference, [and] freedom to communicate ideas and information without interferences.”

The document adds that laws protecting freedom of speech make provisions for the “interests of defence, public safety, public order [and] public morality” as well as for “reasonably” protecting the “reputations, rights, and freedoms of other persons or the private lives of persons concerned in legal proceedings.”

A **2008 effort to amend the Defamation Act** took shape after the Democratic Labour Party (DLP) included in its 2008 electoral manifesto a pledge to introduce “Integrity



Legislation” if the party were to come to power. The proposed legislation included (a) provisions requiring the declaration of assets by public officials (b) a code of conduct of government ministers (c) amendments to the defamation law (d) a new freedom of information (FOI) law (e) constitutional provisions curtailing the powers of the prime minister. The Office of Ombudsman, who would double as Chief Information Officer, was also to be created. The DLP promised to introduce the legislation within the first 100 days of taking office. The Ministerial Code of Conduct was to be implemented “immediately.” The DLP won the general election in January 2008, with 20 out of 30 seats in the Barbados Parliament. David Thompson was sworn in as Barbados’ sixth prime minister.

The Thompson government did not follow through on its promises. It did, however, establish an Advisory Board on Governance, headed by Senator Orlando Marville, to draft the legislation. According to Marville, the specific task of the Board with respect to the Defamation Act was to amend the 1997 Act so as to allow absolute freedom of speech when the target of the remarks was a public figure. In 2008, Marville told the *Barbados Advocate*:

“We’ve got a defamation act that has stayed in the Middle Ages. It was meant basically to protect the colonial class, and it has succeeded in protecting them and everybody who has succeeded them. It is a prevention against the expression of any serious form of opinion, and what we’re looking at is a defamation act that’s only defamation if it is proven that there was malicious intent ... The Defamation Act as it stands at the moment really forbids the expression of opinion. It also makes you guilty until you’re proven innocent.”

Despite the Advisory Board’s efforts, the bill was never submitted to Parliament. In October 2010, Prime Minister Thompson died of pancreatic cancer and was replaced by Freundel Stuart. As of June 2012, no aspect of the integrity legislation has been implemented.

## Mission Findings

After meeting with government, media and civil society representatives over four days on the island, IPI believes that Barbados is on a good path toward decriminalising defamation. Political leaders expressed their commitment to press freedom and their support for IPI’s campaign to decriminalise defamation in the Caribbean.

Prime Minister Freundel Stuart of the Democratic Labour Party (DLP) received the IPI delegation on June 12. A member of the opposition when the current defamation act was enacted in 1997, Stuart recalled having held a discussion with the then-attorney general about Section 34 of the Defamation Act, which establishes the potential of prison terms for libel offenders. “It was his view that it was dangerous to remove it, that it was not a useless provision to have around. I didn’t fight him on it. That’s why it is there”, Stuart told IPI. “At that time I didn’t know that it was going to be very well known”, he joked.

The Prime Minister acknowledged that he had since not given any more thought to removing Section 34, but told IPI delegates: “I must look at it”. Stuart insisted on the importance of allowing journalists to carry out their work freely and of holding public



officials to a higher burden of proof in defamation cases. He noted that his party's electoral manifesto had stressed that, due to their level of responsibility, politicians must be exposed to public scrutiny. "We were interested in making sure that journalists could do their work, examine public officials," he explained.

As did most of the individuals with whom IPI met, Stuart observed that there had not been a recent case of criminal defamation in Barbados. He compared this to Barbados's death-penalty law, which has not been used since 1984. Indeed, the general perception in Barbados relative to the defamation law was that reform was not of great importance if the law wasn't being applied anyway. However, IPI Executive Director Alison Bethel McKenzie pointed out that as long as criminal defamation remains on the books, the risk remains. It could only take one upset politician for the legislation to be applied, she said.

Stuart emphasised that, in any case, final decisions in criminal-defamation cases would not come from a politician, but from a judge after a fair trial. He also added: "Reputation is something you never get back."

Moving to the other side of the political spectrum, IPI also met with Deputy Opposition Leader Dale Marshall of the Barbados Labour Party (BLP), who told IPI he saw no reason to craft a new defamation act in Barbados. Marshall told IPI that the only potential change would be the removal of Section 34; but he said that if legislators had not removed Section 34 in the course of the revision of the Act in 1997, it indicated they felt that criminal provisions for defamation were necessary.

Marshall commented that it would be difficult to find enthusiasm for using legislative energy to change a law that has not been applied in recent memory. He also added that just because the country's criminal defamation law isn't currently being used "doesn't mean that it shouldn't be used."

The deputy opposition leader did not fully embrace the idea that public figures should be subject to closer scrutiny. He explained, for example, that people in Barbados are very cautious about disclosing their assets and indicated that such an expectation on public figures to do so would deter citizens from pursuing politics.

Adriel Brathwaite, attorney general of Barbados, expressed his personal commitment towards introducing a modern defamation law that would protect journalists from prosecution unless there was malicious intent. He said that proposed amendments to the Defamation Act had not been formally introduced to his office and that, once this happened, any changes would still need to be revised by the cabinet before being approved. "I have no doubt that the issue of criminal defamation will be addressed", he told IPI. "We are committed to the issue of freedom of the press", he added.

Referring to criticism about the delays in approving or changing legislation, particularly the Defamation Act, Brathwaite said the amount of time needed depended on the legislation in question and the priority given to it by the cabinet. Sources told IPI that work on the integrity legislation is underway and that a draft of a new defamation act is expected to be submitted to Parliament "sometime in the near future."





Kerryann Ifill, president of the Barbados Senate, also supports decriminalising defamation. She insisted on the need for educating society about how criminal defamation laws affect average citizens and pointed out that removing them will not result in a *carte blanche* for defamation, as civil penalties would still exist.

Ifill's point was well-observed, as outside the political establishment, it appeared that neither the public in general nor journalists themselves were aware of the potential consequences of criminal defamation laws. Kaymar Jordan, editor of *The Nation* newspaper, attributed the lack of knowledge to the fact that the current legislation does not affect journalists, i.e., reporters, photographers, copyeditors, etc., directly, but rather editors and publishers, as the latter receive the majority of complaints and sanctions.

Both Jordan and Patrick Cozier, secretary general of Caribbean Broadcasting Union, believe that there is little appreciation among media practitioners of the fact that criminal defamation provisions are broadly believed to have a chilling effect on the media and induce self-censorship, while civil defamation provisions are broadly perceived as a legitimate legal remedy against defamation.

"As it hasn't been used, it doesn't attract attention," Cozier lamented, before adding: "I wouldn't like [people] to believe it has been totally dormant in the Caribbean." He remains concerned about the law's potential use as a tool for political punishment.

Referring to the overall mission goal of advocating for decriminalising defamation in Barbados, IPI Executive Director Alison Bethel McKenzie, said: "While we would have liked to have a greater commitment from the government in ending criminal defamation, we were impressed by the ruling administration's willingness to enter constructive discussions on the issue. I firmly believe that the island's leaders are committed to the idea of repealing criminal defamation and would urge them to put that commitment in practice and repeal the law before the end of the year."

Pavol Múdry, vice chair of IPI's Executive Board, added: "Barbados is on a good track to remove criminal defamation from the books. We heard promising words from politicians, including the prime minister and the attorney general. They want to deal with this issue."

Apart from the issue of criminal defamation, IPI delegates identified several other press freedom issues, the addressing of which would improve Barbados's generally free media environment. For one, journalists and editors told IPI that access to official information on the island is very difficult, pointing out that the current government has organised only three press conferences with the prime minister since 2010. They suggested that there was a blockade on public documents and insisted on the need for a freedom of information act.

Bajan journalists told IPI that discussions concerning a possible freedom of information bill have taken place over the past three years, though they criticised lack of action toward approval. However, IPI was informed by political leaders that the freedom of information bill is on its way to being enacted, having already been submitted to the attorney general's office.



A second topic, and one that has not been addressed by any major political party, is state control of television frequencies. Barbados boasts just one television station (CBC-TV 8), which is administered by the government. Journalists told IPI that the broadcaster's editorial stance has depended on which party was in power at the time, a practice IPI believes significantly affects the free flow of information on the island.

Marshall, the deputy opposition leader, complained to IPI delegates about the lack of airtime the opposition has received on CBC during the current government. IPI urges Barbados to transform the CBC into a truly public broadcaster that serves the interests of the public by distributing fair and balanced information and representing the opinion of all political players.

A separate issue is the government's denial of television licences to private individuals. For his part, Marshall justified the refusals by explaining that the BLP has tried to protect local programming and culture from private broadcasters that it believed would import most of their content.

Some media in Barbados have been described by citizens as "sensationalistic". Moreover, news outlets come under criticism for publishing certain stories, especially those related to crime or that could have a negative affect on tourism on the island. Thus facing potential criticism, journalists limit themselves to writing about certain acceptable topics, IPI found.

IPI delegates were also told that because of intense competition among the island's media houses, cooperation between journalists is low. This was seen as preventing the press from speaking in a unified voice on issues that affect all media in Barbados.

Association of Caribbean MediaWorkers (ACM) President Wesley Gibbings expressed satisfaction with the results of the visit: "This mission played a strong role in initiating the much needed discourse leading to the eventual repeal of this anachronism [the criminal defamation law]. The ACM will play its part in raising the awareness required to draw the connection between such an intervention and the wider development process, both in Barbados, and the Caribbean region as a whole."

### **Recommendations to the government**

- Give priority to amending the Defamation Act to remove criminal penalties
- Give priority to the freedom of information bill in order to approve it and implement it as soon as possible
- Encourage media diversity by granting licences for new, private television channels
- Transform the state broadcaster into a public broadcaster
- Allow journalists to report freely—without interference or intimidation—on all topics

### **Recommendations to the media**

- Inform the Barbados public and journalists alike about the drawbacks of criminal defamation laws and the benefits of their repeal





- Work to consolidate a strong, intra-island media community that can advocate for the common rights of the press
- Provide added support to the Barbados Association of Journalists in its media development activities
- Invest in journalism training in order to improve the quality of reporting, and of investigative reporting in particular

### **IPI's Op-Ed on Barbados (Published in February 2012)**

#### ***Barbados: There is still time to change the Defamation Act***

*The saying goes that “it ain’t over until it’s over.” The current government in Barbados, in its last year in charge of the country, can still push legislation that could abolish criminal defamation. Doing so would move the nation further away from the shadow of colonialism and increase its recognition as a modern democracy.*

*Barbados is known outside its borders not just for its natural resources, prosperity and high quality of life, but also its level of press freedom is a model worldwide with the island nation consistently ranking among the top 20 nations in the world in this respect. The International Press Institute (IPI), the world’s oldest global press freedom organisation, strongly believes that this position could be improved even further by finally bringing before Parliament the draft of a new defamation act.*

*Laws criminalizing defamation remain on the books in many nations across the Caribbean. They were originally intended to protect the monarchy or aristocracy from criticism or insults, but even the United Kingdom itself decriminalised defamation in 2009. Today these laws serve only to obstruct scrutiny of the actions of those in power and to deprive the people of the information they need to make decisions.*

*There is no legitimate reason to treat defamation as a crime, since civil remedies are sufficient to achieve justice when defamation is alleged. In such cases, international standards call for the least restrictive sanctions. IPI trusts that by repealing criminal defamation, Barbados would solidify its status as one of the most transparent and free countries in the world, and uphold its position as a leader in the Caribbean.*

*Four years ago, the Democratic Labour Party won the elections in Barbados by promising the immediate implementation of the freedom of information, defamation and integrity legislation. This was to include, among other aspects, a new Freedom of Information law and amendments to the Defamation Act inherited from British colonial rule and slightly modified in 1997.*

*Prime Minister David Thompson, who campaigned strongly against criminal defamation laws, established an Advisory Board on Governance as a first step to modifying the legislation. The group worked to revise the legislation and promote the necessary changes. Nevertheless, the promised draft was postponed from December 2008 to 2010, and has apparently since been forgotten.*



*IPI knows that Thompson's death in 2010 may have brought about policy changes and that a modification in the defamation legislation thereby lost its priority status. Nevertheless, we urge his successor, Prime Minister Freundel Stuart, to enact legislation capable of safeguarding the freedom of expression essential to any democracy. We consider that such a move in his final months in office would be Thompson's will and, more importantly, a response to the wishes of those who voted for the Democratic Labour Party.*

*The government and the population know that Barbados' Defamation Act is a relic of the colonial past and that it hinders freedom of expression. IPI believes that when the country's politicians are aware of the situation and have already attempted to change it, half of the work is done. We are optimistic that there is still enough time before the January 2013 elections to implement the new legislation.*

*While several news outlets now say that the people in Barbados were misled and that the Freedom of Information, Defamation and Integrity Legislation is an outstanding debt, IPI believes that public opinion can be changed. Barbados' leaders have the opportunity not only to change these reports, but also to make history, as those who make this decision will have ushered in a more free, transparent, and democratic country.*



### 3. Dominican Republic 14-16 June

#### Mission Participants

- IPI Executive Director Alison Bethel McKenzie
- IPI Press Freedom Adviser for Latin America and the Caribbean Mariela Hoyer
- IPI Executive Board Member Pavol Múdry
- IPI member and *Miami Herald* National & World Editor John Yearwood

#### Criminal Defamation in the Dominican Republic

Wide-reaching laws against defamation (*difamación*) and insult (*injuria*) remain on the books in the Dominican Republic. In both cases, 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*). While the Penal Code enumerates laws against defamation generally, Law No. 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. This includes allegations that 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.

**Law on the Expression and Diffusion of Thought (Law No. 6132)** refers, according to its own stipulations, 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 publica*) and Crimes against Persons (*Delitos contra las personas*).



Crimes against the state include:

- Defaming the President of the Republic (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 of the Republic (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 (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, and ordered to pay civil



damages in the amount of RD\$ 50 million (€971,000). At the time of this writing, Pineda was planning to appeal the verdict.

## Mission Findings

IPI visited the Dominican Republic approximately a month after the country's May 20 presidential election. Danilo Medina of the ruling Dominican Liberation Party (DLP) emerged victorious in that vote, with then-first lady Margarita Cedeño de Fernández as the vice-presidential candidate, and was sworn in on Aug. 16. Due to the political handover, IPI was unable to meet with Medina or former President, Leonel Fernández.

During the mission, IPI delegate found significant motivation among the political leadership to establish a new "communications code", which would consist of a collection of laws that affect the media. Most prominently, the new code would include a reformed Law No. 6132, On the Expression and Diffusion of Thought, that would eliminate provisions criminalising defamation. A draft of the updated law is currently awaiting approval from the president's office before being presented to the country's congress.

The revision process would also include the abolition of criminal defamation in the country's penal code. Laws addressing telecommunications, audiovisual media, and the country's journalists union are expected to be either renewed or crafted as part of the communications code.

Senator José Rafael Vargas confirmed to IPI that the political leadership is interested in improving laws affecting the media. "There are five commissions currently working on that and we hope that [reform] will soon become reality," he said. In his view, there is a general need to rethink and reorganise journalism.

Putting current reform attempts into context, Persio Maldonado, editor of *Nuevo Diario* and president of the Dominican Newspaper Association, explained that in 1996, then-president Leonel Fernández formed a commission of media stakeholders, including Maldonado, to agree upon changes to media-related legislation. A draft of a reformed Law No. 6132 was approved in 2000 by then-president Hipólito Mejía. After being passed by the Senate, the bill died in the justice committee of the Chamber of Deputies.

According to Maldonado, that bill sought to achieve two goals: decriminalise defamation and adapt the law to the new media realities created by the Internet. The 2012 version of Law No. 6132, he added, is more complete but also more complex, and includes measures that would regulate electronic media. Maldonado indicated that particular attention had to be paid to the last point to ensure that government restrictions would not prove an obstacle to online media content.

Members of the Chamber of Deputies—led by Carlos Gabriel García, Elpidio Báez, Francisco Bautista Medina, Josefa Castillo, and Manuel Jiménez—explained that decriminalising defamation remained controversial within the government.

Gabriel García indicated there had been open debate and discussion in the chamber regarding defamation; those who oppose repeal, he said, warned of "moral



assassinations” in the absence of criminal penalties for perceived offences against reputation and honour.

Various individuals with whom IPI met during the mission attributed this resistance to the fact many of the country’s politicians generally did not like the idea of not being able to legally defend themselves when unsavoury reports were circulated about them. In light of the fact that criminal defamation prosecutions have been rare, this was referred to as “a culture of having a penal code for use when it is needed.” It was suggested that those in power were pained to accept that they should be the subject of journalistic investigations.

Another common theme presented to IPI delegates was the lack of a sense of accountability and high professional standards. Jiménez suggested that there was a need for a revised media code of ethics as well as reliable methods of self-regulation.

Noting that a definitive version of the bill had yet to be presented, García emphasised his goal of having a piece of legislation that would meet IPI and international standards. Speaking to IPI delegates, he added: “As soon as the debate begins, we will be counting on you to provide us ... with an international, comparative view on defamation laws, to give us a jump-start into the issue.”

Báez recalled that the government commission in the late 1990s was divided between those who wanted to decriminalise defamation and those who were in favour of maintaining the possibility of sanctions. This disagreement, he noted, is present in the current executive office [of Leonel Fernández] and is one reason the bill has not yet reached Congress. “They are just going to send the problem to us,” he said, adding that he, too, would like IPI to speak to the country’s congress on the importance of abolishing criminal libel.

IPI Executive Director Alison Bethel McKenzie, who led the mission, said: “We are very excited about a successful mission to the Dominican Republic and about the strong desire among the media fraternity and many government officials to repeal criminal defamation. We will work diligently with our partners to that end, and we indeed look forward to returning soon to offer our assistance and support.”

IPI was particularly heartened by its meeting with the country’s attorney general, Radhamés Jiménez Peña, who referred to himself as a “champion of free expression.” Jiménez Peña assured IPI that he agreed with the need to decriminalise defamation, declaring that free expression was a hallmark of democratic society.

The attorney general said he identified with journalists, explaining that throughout his career as a lawyer he had written as a columnist for diverse national newspapers. Noting that then-president Leonel Fernández was also very close to journalism, Jiménez Peña underscored that no journalist had encountered problems with access to information during his term, which ended on Aug. 16.

The conflict about defamation, he explained, could be framed in terms of fundamental rights: On the one hand, the need to preserve privacy and reputation; on the other, the





right to express one's self freely. He concluded, "We've committed ourselves to the side that advocates decriminalisation. We are inclined toward civil sanctions for libel." Jiménez Peña also indicated that civil procedures would be more effective in restoring the perceived damage to one's reputation.

The attorney general said he believed public officials should be more open and that their actions should be more exposed to public scrutiny. He emphasised that under no circumstances should public officials try to impede the work of journalists.

Jiménez Peña added that reforms to the press law should be done as quickly as possible due to growing sensitivity about defamation. "Even if we cannot be considered the cradle of press freedom in Latin America and the Caribbean," he said, "a collective consciousness was created here many years ago and, although we are small, we have some of the best reporting."

Though he reiterated that his government had not committed any transgression against press freedom, the attorney general nevertheless called Law No. 6132 "obsolete" and said reforming it would constitute "significant progress."

Olivo de León, president of the National Union of Media Workers, told IPI that Dominican media generally enjoy respect and influence among the public. "Perhaps due to that we face fewer legal cases," he commented. "Nevertheless," he continued, "there exists the danger that the law will be used. Another danger is that authorities aren't conscious of fundamental rights and don't give importance to modifying the law." De León said his organisation has spent three years campaigning for changes to the press law.

IPI delegates were also told that an additional challenge was that editors rather than journalists were the ones usually held financially liable when a journalist allegedly commits libel. In the view of some media workers, this situation promotes a lack of ethics among journalists.

While some jurisdictions do require journalists to share in libel damages, IPI believes that editors are ultimately responsible for the content produced by their medium. Nevertheless, it is critical that journalists be made aware of the consequences of defamation charges and the importance of accurate and fair reporting.

IPI Vice-Chair Pavol Múdry said: "The Dominican Republic seems to be on the right track for creating high-quality media legislation. However, the media should do more to explain the benefits of decriminalising defamation to the average citizen." Múdry added that the discussion should be broadened to include not just politicians and the media industry, but also the general public.

Politicians and journalists in the Dominican Republic expressed concern to IPI about several other press freedom issues in addition to defamation. In particular, many feared that media independence was under threat from a blurring of boundaries between politics and journalism.



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Nuria Piera, a well-known investigative journalist, told IPI delegates that the government had created a “structure” of hundreds of journalists, which in her view explained the lack of overt media suppression. She added: “We journalists who are outside this structure are the ones who feel the pressure.”

Piera pointed to an incident in which she reported on a public official who wasn’t paying his electrical bills; the official sued Piera and her advertisers, but was later forced by a “very brave judge” to apologise.

Prominent journalist Adalberto Grullón commented: “The principle threat to free expression doesn’t come from political repression, but rather the fact that journalists fail to fulfil their function as watchdog of democracy”. Grullón and others explained to IPI delegates that a major problem affecting media integrity was the fact that many journalists worked for both government public relations offices and private media outlets at the same time – usually in order to supplement the meagre salaries earned by private reporters.

As a consequence, said Juan Bolívar Díaz, another respected journalist, there is a large proportion of private media reporters who are bankrolled by the government: of the 3,000 members of the Dominican Union of Journalists, 2,200 earn a government salary. Díaz noted that while government officials often give journalists a free hand with scheduling, they expect favourable coverage in return.

“We don’t see a solution in the short term,” Díaz said, “because [media] companies assume that the state will cover half of their payroll.” Nevertheless, the threat to independent reporting is clear: In this situation, Dominican journalists not only feel less inclined to produce less critical coverage, but they also have less time to dedicate to in-depth investigations.

Piera added: “It’s not clear who is a journalist because politicians are attempting to be journalists and vice versa. We and the rest of the public are very confused.” She continued, “The serious thing is that the public thinks that it is normal for journalists to be biased.”

Media representatives whom IPI met agreed with Piera that this situation was viewed as acceptable – not just by the public, but by reporters themselves. In one instance, IPI was told that a journalist who covered the police and was also a police officer himself was promoted to police spokesperson. This was not seen as a conflict of interest – indeed, the journalist in question was celebrated by his colleagues for his accomplishment, local sources told IPI delegates.

Another issue raised to IPI delegates was government contracting of journalists to act as intermediaries to firms vying for public-works contracts. For example, journalists who have no engineering knowledge have been hired to research and choose among competing companies for bridge-building projects. As journalists receive a commission for this work, this was characterised in meetings as another manner of “buying” the media.



Bethel McKenzie said: “The blurring of boundaries between politics and journalism in the Dominican Republic is an issue that needs to be highlighted. It is normal for journalists to have conflicts of interest; however, in the interests of transparency, these need to be declared. The public should be made aware of factors that may influence the tone or depth of a piece of investigative journalism, particularly one that focuses on public officials.”

### Recommendations to the government

- Prioritise reform of Law No. 6132, particularly the decriminalisation of defamation
- Continue discussion of improvements to the penal code, specifically the removal of criminal defamation clauses
- Ensure the consultation of the media in the drafting of the new communications code
- End the practice of contracting journalists

### Recommendations to the media

- Consider that improvements in journalists’ salaries will help to limit conflicts of interest and promote independence by reducing the necessity to seek second jobs in government offices
- Place emphasis on investigative journalism
- Form and adhere to ethical guidelines and internal self-regulatory processes that promote responsible journalism

### IPI Letter to President Danilo Medina on Defamation (Sept. 2012)

*Excmo. Sr. Danilo Medina  
President of the Dominican Republic*

*Palacio Nacional  
Ave. Mexico, Gazcue, Distrito Nacional  
Santo Domingo, Dominican Republic*

*26 September 2012*

*Dear President Medina:*

*I am writing to you today on behalf of the International Press Institute (IPI), a global network of publishers, editors, and leading journalists, to express our concern over the recent convictions on criminal defamation charges of two Dominican journalists.*

*As you are undoubtedly aware, on September 13, journalist Melton Pineda was convicted of defaming fellow journalist Marino Zapete during a radio broadcast earlier this year and sentenced to three months in prison. Pineda was also ordered to pay a fine of \$RD 100. Additionally, in January, Nagua radio journalist Johnny Alberto Salazar was found guilty of defaming a local lawyer and sentenced to six months in prison. That verdict was later overturned on appeal.*



*Although our organisation takes no position on the content of the specific reports deemed defamatory, IPI is opposed to criminal libel laws in all cases and is concerned about the precedent set by these two cases. We believe that the civil courtroom is the only acceptable environment for the resolution of defamation cases, provided that any damages awarded aim to restore reputation and not to silence journalists or media outlets. No journalist should face criminal charges for what he or she has written or broadcast, unless that information incites violence, which in most countries is a criminal offense.*

*Criminal libel laws are redundant and risk being abused by public officials to chill critical opinion. In 2005, the special rapporteur for freedom of expression of the Organisation of American States (OAS) declared, in a joint statement with the African Commissioner for Human and People's Rights: "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."*

*IPI delegates visited the Dominican Republic in June as part of IPI's campaign to repeal criminal libel laws in the Caribbean. We were highly disappointed that our attempts to meet with you during our trip were unsuccessful. Needless to say, we hope that we will have an opportunity to discuss press freedom with you on our next visit to the island nation in early 2013.*

*During the numerous meetings with high-level government officials this past June, were we told in no uncertain terms that 'ningún periodista irá a la cárcel en la República Dominicana' for criminal defamation and, indeed, some lawmakers went so far as to say that we can expect criminal libel to be repealing shortly. It is our understanding that reforms to Law No. 6132, on the Expression and Diffusion of Thought, are currently pending in the executive office.*

*Mr. President, as leader of your country and your party, and as a man who stood before his fellow world leaders this week to call on nations to "work together to overcome exclusion, and not to maintain poverty and extreme poverty in an indefinite manner", I respectfully urge you to ensure that any media reform includes the decriminalisation of defamation. Unless the media is empowered to report on the nation, and particularly on the actions of its government, without fear of going to jail for doing so, the people of the Dominican Republic will themselves risk exclusion and the ability and right to fully participate in the democratic process.*

*Thank you for your kind attention to this matter. We look forward to working with you to ensure that press freedom in the Dominican Republic remains protected, for the benefit of all Dominicans.*

*Sincerely,*

*Alison Bethel McKenzie  
Executive Director  
International Press Institute*



## 4. Jamaica 18 – 20 June

### Mission Participants

- IPI Executive Director Alison Bethel McKenzie
- IPI Press Freedom Adviser for Latin America and the Caribbean Mariela Hoyer
- IPI Executive Board Member Pavol Múdry
- Association of Caribbean MediaWorkers 2<sup>nd</sup> Vice President Byron Buckley

### Criminal Defamation in Jamaica

Although freedom of expression is guaranteed by the Jamaican constitution, defamation laws often prevent the media from carrying out investigative reporting on matters of key importance, such as criminality and corruption. Jamaican libel laws give priority to the reputation of the plaintiff, and the fear for high damages in libel lawsuits leads the media to self-censor.

No prosecutions for criminal libel have taken place in recent times, but expensive civil actions for defamation are common in Jamaica. Most notable was the case of *Gleaner Co. v. Abrahams* (1996) in which former minister of tourism Eric Anthony Abrahams was awarded J\$80.7 million after Jamaica's oldest newspaper, *The Gleaner*, republished a story from the Associated Press that accused Abrahams of accepting bribes from an American advertising company. The verdict was later deemed excessive and reduced to J\$35 million by the Jamaican Court of Appeal in 2002.

Criminal libel is regulated by the **The Libel and Slander Act (1851)**, which is nearly an exact copy of the colonial-era Lord Campbell's Act, largely repealed in England in 2009. It stipulates prison terms of up to two years for malicious libel. When the libel is of a trivial character, according to the Act, the maximum punishment is three months in prison, or a fine no more than J\$100. **The Defamation Act (1961)** applies to civil cases.

The **Jamaica Constitution (1962)**, in Chapter III "Fundamental Rights and Freedoms" set forth that "no person shall be hindered in the enjoyment of this freedom of expression ... [which] includes the freedom to hold opinions and to receive and impart ideas and information without interference."

The constitution noted, however, that the above freedom could be restricted in the interests of defence, public morality, public safety, and public order or "for the purpose of protecting the reputations, rights, and freedoms of other persons, or the private lives of persons concerned in legal proceedings." That clause left open the potential for privileging reputation, particularly of public officials, over the rights of the press.

After nearly two decades of discussion, the Jamaican parliament in April 2011 approved the **Charter of Rights**, which replaced Chapter III of the Constitution. The Charter, however, reproduces the provisions of the previous Chapter III concerning freedom of expression virtually word-for-word.





Since the 1990s, there has been an **increasing demand for change to the country's defamation laws**. In 2007, then-prime minister Bruce Golding appointed a committee, chaired by Justice Hugh Smalls, and consisting of lawyers, members of the opposition, NGOs, and representative of the press to review the defamation law. The committee issued 13 recommendations, which included the abolition of criminal libel and substantial procedural changes to civil libel cases.

In Jan. 2011, a parliamentary Joint Special Committee began to discuss these recommendations, and later issued a report that was approved by the Senate. After receiving cabinet approval, a bill entitled "An Act to Repeal the Defamation Act and the Libel and Slander Act" was tabled in the House of Representatives.

The bill would decriminalise defamation and ensure, according to *The Gleaner*, that the civil defamation stature "does not place unreasonable limits on freedom of expression and, in particular, on the publication and discussion of issues of public interest and importance." The bill includes a new requirement that a statement must have caused substantial harm in order for it to be considered libellous. It also moves the power to decide the amount of pecuniary damages from juries to judges, and ends the possibility of seeking exemplary or punitive damages. The current version of the law suggests that an action of defamation must be brought within two years from the date in which the material was first published, instead of the current seven years.

In Dec. 2011, Jamaica held a general election that saw the People's National Party, led by Portia Simpson-Miller, take power from the Jamaica Labour Party, Andrew Holness. The campaign and the subsequent change of government have delayed discussion and passage of the bill.

## Mission Findings

Boasting a free and vibrant press, Jamaica ranks among the top 20 percent of countries in the world in terms of press freedom and often receives higher marks than the United States or the United Kingdom. However, there is room for improvement. IPI believes that changes to the country's defamation law can make Jamaica the clear regional leader in freedom of the media.

IPI visited Jamaica in June for the second time in eight months. On this occasion, building on a previous visit in December 2011, IPI achieved consensus about the need to abolish criminalised defamation. Politicians, media representatives and members of human rights and civil society groups declared they were convinced of the value of defamation reform, but aware that changes would depend on the priority given to the issue.

Dr. Lloyd Barnett, past chairperson of the Independent Jamaica Council for Human Rights, told IPI delegates: "There is a consensus in favour [of repeal]. The difficulty in Jamaica is what priority is given to it. From a human rights perspective, there are other laws waiting."

Both Barnett and the council's current president, Arlene Harrison-Henry, spoke highly of the island's press-freedom situation. "Freedom of the press is one of the strengths of our



democracy,” said Harrison-Henry. She indicated that changes to the law would depend on the political priority given to it, and said there had not been enough media discussion about the benefits of repeal.

Graham Glover, deputy high commissioner at the British High Commission in Jamaica, echoed the overall sentiment that Jamaica possessed a free press and an overall positive media experience, although he observed, “Sometimes politicians feel that the media is too free.” He noted a general recognition of the need to abolish criminal libel.

While no Jamaican journalist has been prosecuted for criminal defamation in recent times, IPI believes that as long as the law exists, so does the danger of its misuse by offended politicians. As Claude Robinson, a prominent columnist, told IPI delegates: “it has to be repealed because it is on the books and can therefore be used.”

Despite the absence of criminal defamation claims, civil suits resulting in excessive fines remain a significant problem on the island, members of the Jamaica editors and publishers group told IPI over lunch. At one point, insurance companies balked at covering media houses in Jamaica because of the potential legal damages. Robinson commented: “In Jamaica, a big issue for the press is the huge damages awarded [in civil libel cases]. I suspect part of the reason for these large awards is to punish the press, rather than to compensate for the damage.”

Along with abolishing criminal libel, changes to civil libel are included in the defamation bill that was tabled in 2011. Members of the Media Association of Jamaica (MAJ) told IPI they were prepared to work with that bill, but added that changes are required. “If the bill that is put forth this year [2012] is identical to last year’s version, it would be worse for the industry than the current law because of the bill’s wording,” one MAJ representative said.

Altogether, the MAJ and the Press Association of Jamaica (PAJ) are seeking six changes to the bill:

- (1) Reduce the period in which defamation claims can be brought from two years to one
- (2) Clarify that proof of special damage is required to recover damages in a suit, though not to bring the suit
- (3) Clarify that monetary damages are only an option in defamation proceedings [other options being, et. al., a printed apology]
- (4) Prohibit multiple suits arising from the same alleged defamatory content, except in restricted circumstances
- (5) Establish a cap on non-financial or “general” damages
- (6) Provide wider protection to those who innocently disseminate allegedly defamatory content, e.g. media houses republishing articles from wire services.

IPI supports these recommendations and urges the Jamaican government to include them in the defamation bill.

The report put forth as a model for Jamaican legislation the United States Supreme Court’s decision in *New York Times v. Sullivan* (1964), which, the MAJ and PAJ noted, “encourages



robust, open and uninhibited debate on public issues.” This debate should be allowed, they added, “especially when directed at public officials (subject to a few caveats”, even where such debate is vehement, caustic and unpleasantly sharp.”

The MAJ and PAJ underscored that the majority of their proposed changes were meant to bring the bill in line with the recommendations of parliamentary committees that had studied the current state of Jamaican defamation law.

IPI delegates were also informed that journalists do not feel the effects of the current libel law, as editors were the ones usually held financially liable in defamation cases. This was seen as decreasing the incentive for caution among journalists, although it was also noted that in cases where the editor was unable to pay, damages could be passed on to the media owner and the journalist in question.

While some jurisdictions do require journalists to share in libel damages, IPI believes that editors are ultimately responsible for the content produced by their media. Nevertheless, it is critical that journalists be made aware of the consequences of defamation charges and the importance of accurate and fair reporting.

Members of the Jamaican government appeared receptive to the media’s concerns, and committed to IPI’s goal of decriminalising defamation. In meetings with IPI delegates, Justice Minister Mark Golding and Information Minister Sandra Falconer confirmed the government’s intent to approve a bill before the end of the year. Both ministers acknowledged that the media has issues with parts of the current bill as written, but pointed out that discussions aimed at resolving the disagreements were under way. If we do it,” Golding said, referring to having parliament pass a libel bill, “we would abolish criminal defamation.”

A.J. Nicholson, minister of foreign affairs and former justice minister, also expressed to IPI his support for decriminalising defamation: “There are other ways of dealing with this [defamation] rather than using criminal courts; the view is that the time has passed for empires; the time has passed for having the laws.”

Pavol Múdry, vice-chair of IPI’s Executive Board, said of IPI’s mission to Jamaica: “We had very promising meetings, not only with the media, but also with critical political figures. I got the impression that the government is serious about repealing criminal defamation. However, we urge the government to take the media’s concerns about the draft law seriously - we are troubled by reports of lengthy legal procedures that have in the past ended in exorbitant, unnecessary damage awards.”

IPI Executive Director Alison Bethel McKenzie added: “We are anxious to see the government of Jamaica repeal criminal defamation. Such a move would send a strong message to the rest of the Caribbean that these laws are archaic and need to be abolished.”

The MAJ and PAJ feel that there is a need to improve access to public information. A freedom of information act (formally known as the Access to Information Act) took effect in 2002, but journalists say that requests for records take too long to be processed. IPI



was told that when documents contain only a few points that are considered of a sensitive nature, public authorities place a hold on the request while seeking clarification instead of delivering the document immediately with the sensitive points redacted. Journalists also said that public officials sometimes give extra, unnecessary information in order to confuse the person making the request.

Additionally, while not written in the law, the Access to Information Act was intended to be revised every three years. IPI learned that this has happened only once in the 10 years since the law has been in effect.

Jamaican media representatives also say that the 101-year-old Official Secrets Act is hampering the efficacy of both the Access to Information Act as well as the new Protected Disclosures Act (2011), which shields whistleblowers. The Official Secrets Act has long been a target for repeal but nevertheless remains on the books.

Justice Minister Golding told IPI that a committee was in the process of revising the Official Secrets Act, and assured delegates that the trend in Jamaica was toward greater transparency.

IPI also met with Trevor Munroe, president of the anti-corruption group National Integrity Action Limited, who said he considered the Access to Information Act to be a good law, noting the possibility of appealing the refusal to disclose a certain document. However, Munroe criticised exemptions to the law as being “far too wide and too broad” and noted a lack of public outcry that the law had not been sufficiently revised since its introduction.

Over the course of the mission, politicians and representatives of civil society in particular expressed concern over what they viewed as inadequate training that resulted in a lack of investigative reporting. Peter Bunting, minister of national security, asserted: “I find our journalists quite timid ... We have a lot of commentators, but not a lot of investigation.” According to Bunting, Jamaican journalists are poorly paid, and overly content with relying on government-issued press releases.

Several persons with whom IPI met emphasised the need for a stronger self-regulatory mechanism on the part of the media. IPI delegates were told that a Caribbean press council that had been established by the industry did not work, and that media outlets had not actively searched for another manner of ensuring ethical standards.

Robinson, the columnist, told IPI that he understood that certain forms of internal regulation, such as ombudsmen, were not affordable for some small media. However, he faulted the media for believing that the admittance of errors could be used as justification for litigation later on. He said: “I fear that the reluctance to have a self regulatory body will generate more expectations in the government.”

All of the government ministers with whom IPI met emphasised their commitment to good relations with the media. Minister Bunting noted that each quarter he holds press briefings explaining the results of his office’s policies in the past quarter, as well as future action plans. He added that at least once or twice a week he gives speeches at public events where journalists are allowed to pose questions.



Minister Falconer, a former journalist herself, said that every week she organises a “Jamaica House Briefing” where other ministers or civil servants are invited to talk to the press about different issues.

### **Recommendations to the government**

- Adopt the recommended changes to the defamation bill submitted by the press and media associations
- Give priority to the defamation bill in order to pass it before the end of 2012, in order to abolish criminal libel and curb exorbitant fines levied against the media in civil cases
- Conduct a periodic review of the Access to Information Act and work to ensure that requests for information are completed in a timely and efficient manner that prioritises the public’s right to know
- Repeal the Official Secrets Act to increase government transparency

### **Recommendations to the media**

- Draft and implement internal regulatory mechanisms that promote accurate and responsible reporting
- Work to increase public awareness of the dangers of both criminal defamation and the excessive damages awarded in civil trials
- Prioritise, and provide training for, investigative journalism

## **IPI’s Op-Ed on Jamaica (Published in January 2012)**

### ***Celebrate Jamaica by Abolishing Outdated Colonial Laws***

*As Jamaicans prepare to mark 50 years of independence this year, the International Press Institute (IPI), the world’s oldest global press freedom organisation, extends its warmest wishes to and calls on the island nation’s new leaders to complete the country’s move away from the shadow of colonialism.*

*Jamaica has made tremendous strides since it achieved independence. The nation’s culture is known and loved worldwide, and the achievements of its people reverberate far beyond the island’s shores. Jamaica’s continued embrace of democracy following colonialism serves as a particularly positive – and powerful – example across the globe.*

*In recognition of that role, IPI urges the leaders elected to guide Jamaica into its next half century of self-determination to celebrate independence by swiftly enacting legislation to safeguard the freedom of expression essential to any democracy. Specifically, IPI calls on members of Parliament to approve pending proposals that would reform defamation law and improve the country’s Access to Information law.*

*Both proposals have received bipartisan support.*



*The first, set forth in a bill tabled in Parliament last November, would streamline current defamation law by allowing those who feel they have been libelled or slandered to seek justice in court while removing the threat of criminal prosecution and jail time that hovers over those who speak out in the public interest. The bill followed the House of Representatives' approval of recommendations in a report by senators and representatives from the Jamaica Labour Party (JLP) and the People's National Party (PNP).*

*The continued criminalisation of defamation is an archaic holdover from Jamaica's colonial past. Originally intended to protect the monarchy or aristocracy from criticism or insults, criminal defamation laws today serve only to obstruct scrutiny of the actions of those holding power and to deprive the people of the information they need to make decisions that will affect their lives for years to come.*

*Civil remedies are sufficient to achieve justice when defamation is alleged, and are in line with international standards that call for the least restrictive sanctions in such cases. There is no legitimate reason to treat defamation as a crime, an offence against the state, yet criminal defamation laws remain on the books in many nations across the Caribbean and around the world. They can be, and sometimes are, used to impede the legitimate flow of information.*

*Repealing criminal defamation would make Jamaica a leader in the Caribbean.*

*The second proposal would improve the 2002 Access to Information Act and replace the 1911 Official Secrets Act with a law aimed at promoting openness, transparency and accountability. A bill expected to be tabled in Parliament follows a House vote approving a report by senators and representatives from the PNP and the JLP who recommended a law that weighs the public interest in disclosure of information while still imposing penalties for any release that would put the state at risk.*

*Like criminal defamation, the Official Secrets Act is a product of an age in which government conducted business behind closed doors and citizens were expected to accept their rulers' decisions without question. Even the United Kingdom repealed and replaced its version of this 100-year-old colonial-era relic in 1989.*

*Both laws can be used by those in power to target and suppress legitimate news stories that threaten their personal interests, or to punish journalists reporting on embarrassing matters that are nevertheless of vital public concern. Applied in moderation, the laws still have a chilling effect on freedom of expression and impose unjust punishments – including imprisonment and excessive fines – that are disproportionate to the 'crime' committed.*

*Jamaicans have many reasons to be proud as they prepare to celebrate 50 years since the end of the colonial era and it is fitting that the occasion was preceded by citizens coming together at the polls to make their voices heard. But the right to decide the country's future carries the responsibility to exercise it wisely. The people of Jamaica can only fulfil that sacred duty if they are adequately informed about the issues they face.*

*Jamaica today holds the opportunity to strengthen the foundations of democratic self-determination and to once again serve as a positive example for the world to embrace by*





International  
Press  
Institute

Defending Press Freedom For Over 60 Years

*eliminating these remaining vestiges of colonialism. On the eve of this Golden Jubilee, Jamaica's leaders can offer their country no greater tribute.*



## 5. Trinidad and Tobago 21-23 June

### Mission Participants

- IPI Executive Director Alison Bethel McKenzie
- IPI Deputy Director Anthony Mills
- IPI Press Freedom Adviser for Latin America and the Caribbean Mariela Hoyer

### Criminal Defamation in Trinidad and Tobago

Criminal penalties for defamation in Trinidad and Tobago are established by the Libel and Defamation Act, which dates back to 1846 and reflects British colonial law (as set forth in Lord Campbell's Act, repealed in England and Wales in 2009) at the time. Those found guilty could face up to two years in prison. The Act is plaintiff-friendly and denies the media the defences of qualified privilege or justification and fair comment.

IPI believes that Trinidad and Tobago's defamation laws are an anachronism, and sources told IPI the law prevents open public debate about authority figures and stops the media from holding government to account. The media is often blamed for the lack of investigative journalism in Trinidad and Tobago, but journalists argue that the problem is the restrictive laws.

In 1997, the government published a green paper, "Reform of Media Law – Towards a Free and Responsible Media", in recognition of the need for reform to Trinidad and Tobago's defamation laws. The green paper called for the replacement of the Libel and Defamation Act with legislation that would abolish criminal libel and better protect press freedom.

After parts of the paper were opposed by media sectors, the government continued researching and in 2001 presented a defamation-reform bill to parliament. The draft bill included the defences of truth, fair comment, as well as triviality to prevent frivolous claims. It also encouraged offers to make amends over financial damages, so as to prioritise the restoration of plaintiff reputation over compensation. The bill removed virtually all criminal penalties for defamation, though those convicted of making "untrue statements" could still face a fine of TT\$ 5,000 in certain cases. In October 2001, the bill lapsed and the issue has not been revisited by the government since.

### Mission Findings

Ahead of IPI's 2012 World Congress, held June 23-26 in Port of Spain, IPI delegates met with media representatives and politicians in Trinidad and Tobago to listen to their views on criminal defamation and other concerns related to the press.

Trinidad and Tobago boasts one of the largest and most vibrant media environments in the Caribbean. However, journalists told IPI that over the last several years, there has been a decrease in press freedom. A number of media outlets have been forced to settle (civil) defamation lawsuits in court.



Kathy Ann Latchoo, the country's deputy director of public prosecutions and a former journalist, told IPI that reforming criminal defamation had not been on the radar in Trinidad and Tobago since the late 1990s, when the government published a green paper on libel reform. On that occasion, Ken Gordon, former CEO of the Caribbean Communications Network, criticised the paper and, in response the prime minister called Gordon a "pseudo racist." Gordon then sued the prime minister for defamation in a case that eventually reached the Privy Council in the United Kingdom.

Latchoo called the statute a "relic of the past." She acknowledged that the law had not been invoked in recent memory but added: "It is still there, and it can still be used."

One editor with whom IPI spoke summarised the situation of press freedom and defamation in Trinidad and Tobago by saying, "Apart from the possibility of going to jail, the press here is very free ... we can publish whatever we want."

Herbert Volney, then justice minister, told IPI that his government was aware of the power and importance of the media and that there is a working relationship of mutual respect. "As a government, we maintain the rich heritage of not interfering with the media ... We respect the fact that when in opposition, the free press was of significant importance for us," Volney said.

Speaking specifically about criminal libel, Volney noted that the law has not been used in recent history and added: "We have a lot of antiquated laws that have to be revised. It is a matter of determining priorities."

Attorney General Anand Ramlogan participated in several activities at IPI's World Congress and also received IPI delegates in his office to discuss Trinidad's defamation laws. "I agree it ought to be renewed and we welcome any comments on this matter," Ramlogan said, referring to the Defamation Act

Ramlogan asserted that journalists should not go to jail for what he called "simple" defamation. However, he said that due the "power of the press", reforms to the defamation law should include a model that is fair to plaintiffs in cases of reckless reporting.

In her speech at the closing ceremony of IPI's World Congress, Trinidad and Tobago Prime Minister Kamla Persad-Bissessar made reference to IPI's meeting with Ramlogan and declared, "I want to signal our intention to review our defamation laws and bring them in line with international best practise."

The prime minister's address, however, made clear that the government emphasised the importance of ethical reporting. "The responsibility falls to us as the Government to ensure that even as we preside over the passionate defence of all aspects of freedom, we must ensure that the exercise of one's freedom at no time represents an impingement of another's freedom," she said.

Following the speech, IPI Executive Director Alison Bethel McKenzie said: "We are very pleased that Prime Minister Persad-Bissessar has agreed to review her nation's



defamation laws. We hope that this is the first step toward legal reforms in Trinidad and Tobago that will protect the rights of journalists to report freely and accurately without fear of retribution for raising unpopular truths.”

In addition to criminal defamation, IPI delegates identified several other press-freedom concerns in Trinidad and Tobago. Journalists and media representatives at times appeared mistrustful of the government’s attempts to amend press-related laws.

“We have to be eternally vigilant,” said one prominent media worker, asserting, “Politicians often reform media law to make it stricter.” The person singled out the “frightening” implications of the Data Protection Act (2011), on account of which “you cannot publish anything before asking permission.”

IPI delegates learned of several mechanisms of intimidation employed by public figures, including the frequent use of “pre-action protocol letters,” which essentially constitute a threat to sue, and requests from the telecom authority for electronic tapes based on complaints.

The threat of legal action appears to be causing self-censorship within the newsroom. As one journalist put it, “Media managers think that if you get a letter from a lawyer, it is a sign that you did something wrong and will cost the company money.”

While in Trinidad and Tobago, IPI met with Lasana Liburd, a well-known sports journalist who had reported on allegations that former FIFA vice-president and current Trinidadian Minister of Works and Infrastructure Jack Warner had embezzled FIFA aid money to Haiti. Liburd has since been the target of frequent harassment from Warner and his lawyers, also in the form of pre-action protocol letters.

At times the intimidation has been more direct: in February, Trinidadian police raided the offices of *Newsday* as well as the home of a senior investigative journalist as part of an effort to force the journalist, Andre Bagoo, to reveal his source for a story on the country’s Integrity Commission. A month and a half prior, police also raided a Caribbean Communications Network Television 6 to execute a search warrant for a controversial videotape showing the sexual assault of a teenage girl that the private broadcaster had aired.

The latter case has received widespread media coverage in the country, as the director of the television program, who is not a journalist, is now facing five charges under the Sexual Offences Act. Journalists with whom IPI spoke said the incident has damaged the Trinidadian media’s reputation, though they also said “there was no need” for the police raid, as the tape could have been obtained in a less confrontational manner.

IPI also learned that many of the country’s talk shows are led by untrained journalists, which could also have an effect on the way journalism in Trinidad and Tobago is perceived.



Media and government representatives alike told IPI delegates that public opinion of the media has also been negatively affected by a string of contempt of court cases, some triggered by the publishing of material that was seen as prejudicing criminal trials.

Several journalists criticised the government for a lack of transparency. In particular, frustration was expressed with the country's Access to Information Act, which took effect in 2001. IPI delegates were told that requests take too long—often two months or more—to be processed

In addition, IPI heard concerns about a weekly press conference held by the government, which, in the eyes of some media members, were attempts to instruct journalists on which issues to cover.

Finally, journalists pointed to the influence of advertisers, some of whom sought to limit coverage of certain topics using the threat of withdrawing their business. Politicians have also periodically called for boycotts of critical newspapers.

### Recommendations to the government

- Prioritise the abolition of criminal defamation
- Ensure that acts of intimidation against the news media—including police raids, boycotts, and legal threats—are ended
- Improve responses to public information under the Freedom of Information Act
- Ensure the consultation of the media in laws that affect it

### Recommendations to the media

- Bring the issue of defamation into the public sphere by explaining the negative consequences of criminal defamation laws
- Maintain high ethical standards as a tool to increase standing in public opinion
- Work to strengthen to strengthen the influence of the Media Association of Trinidad and Tobago and the Trinidad and Tobago Publishers and Broadcasters Association

### Selected Recent IPI Coverage on Trinidad and Tobago

#### ***Trinidadian broadcasters requested to carry government content***

*IPI objects to concession demands, urges government to closely consult with media*

*VIENNA, Oct 5, 2012 - The International Press Institute (IPI) today expressed serious concern over a plan announced by the communications minister of Trinidad and Tobago to require the country's radio and television broadcasters to carry up to one hour of government programming per day.*

*Emphasising that "the people must know what the Government is doing with its resources so that they can make informed decisions," Minister Jamal Mohammed announced in a statement last weekend that all media in the country would be asked to transmit official messages lasting up to five minutes once an hour every hour from 6 am to 6 pm.*



*The request was made on the basis of a concession agreement, compulsory for all broadcasters operating in Trinidad and Tobago, that grants the government up to 14 hours of airtime a week free of charge, and which allows the government to “reasonably declare any matter or event to be of public interest and require the concessionaire to broadcast [it].” Although the agreement was signed in 2005, the government has never taken advantage of these provisions.*

*IPI believes that the concession agreement should grant the government the power to order transmissions only in cases of national or local emergencies, rather than in the name of the broadly defined term “public interest.” All other requests made by the government should be optional.*

*Fundamentally, it should be underscored that the role of private media is not to act as spokesperson for the government. If a government wishes to make its voice heard, it has the option to purchase airtime.*

*The Trinidadian government currently owns two television stations and three radio stations, which compete commercially with private broadcasters.*

*The communications ministry is also heavily pressing broadcasters to include more “local content”. Mohammed in a telephone interview with the Express last week that if “moral persuasion” was unsuccessful, the government would consider legislation to compel radio and TV stations to air more locally produced programs.*

*While IPI supports the communication minister’s stated intention “for all the people of Trinidad and Tobago to have a voice,” this should not be accomplished by threatening or legally coercing the private sector.*

*IPI Deputy Director Anthony Mills said: “The demands related to government transmission contained in the concession agreement, which all broadcasters in Trinidad and Tobago are required to sign, are a troubling development for a democracy. The Trinidadian government needs to ensure that it does not infringe upon the commercial freedom of broadcast media.”*

*Mills continued: “We are also concerned that the media were not properly consulted either in the drafting of the concession agreement, or in the communication minister’s recent proposal. We urge the Trinidadian government to confer closely with the media when pursuing regulations that directly affect their editorial and economic independence.”*

*IPI held its 2012 World Congress in Port of Spain in June, at which both President George Maxwell Richards and Prime Minister Kamla Persad-Bissessar spoke out strongly in favour of press freedom and repealing criminal defamation.*





## ***IPI Condemns T&T Raid at Newsday***

*Police searched the newsroom and a journalist's residence*

*VIENNA, Jan 1, 2012 – More than 20 armed police officers on Thursday raided the offices of a private television broadcaster in Trinidad and Tobago's capital city Port of Spain.*

*Local media reported that police came to the offices of Caribbean Communications Network Television 6 (CCN) to execute a search warrant for a videotape containing footage depicting an alleged sexual assault on a mentally-disabled 13-year-old girl.*

*Representatives of CCN reportedly met with police officers at the offices and handed over the videotape. Local observers said that police carrying out the raid blocked both entrances to the compound where CCN's offices are located and searched both staff and visitors.*

*Authorities last year opened an investigation into complaints that the broadcaster may have breached the Sexual Offences Act when it aired the footage in October during reporter Ian Alleyne's controversial Crime Watch program. Alleyne apologised on air and CCN suspended him, but he and the show returned to the station's airwaves in November.*

*CCN Chief Executive Officer Shida Bolai told Stabroek News that the company did not protest the execution of a search warrant. But she said CCN had cooperated with police in their investigation and she expressed concern over the authorities' show of force.*

*International Press Institute (IPI) Executive Director Alison Bethel McKenzie said: "A raid by police on a media house always raises profound issues of freedom of the press and the permissible scope of government action. We are very disappointed that authorities decided to send approximately 25 armed officers to CCN's offices to look for a single videotape they could have obtained by asking. Such actions inevitably have a chilling effect on media freedom and we urge the government to take steps to make sure that disproportionate shows of force like this don't become a habit."*

*The Media Association of Trinidad and Tobago condemned the police action in a statement saying it "can be construed as an attempt to intimidate and harass a media house that, from all reports, had been co-operating fully with their investigation".*

*Dawn Thomas, a member of IPI's Executive Board and Chief Executive Officer of One Caribbean Media Ltd., of which CCN is a part, said the incident left many of the station's staff traumatised.*

*"This unnecessary show of force by the police was against a background of a cooperative stance from the management of CCN on other occasions that video material was requested by the police," she added. "I am very concerned about this development since it has the potential to intimidate media staff, undermine public confidence and poses a threat to press freedom."*