

## **Preliminary Observations**

### **Incitement and Public Official Defamation Laws *Middle East and North Africa***

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#### **General Observations**

All countries included in this research, with the exception of Lebanon, have a legal system that is based, to various degrees, on the sharia law. Saudi Arabia and Iran have a “classical sharia system” where the Islamic law plays a dominant role in the legal system.<sup>1</sup> Saudi Arabia has no codified criminal laws, and prosecutors, judges and religious leaders have discretion to criminalize acts based on their own interpretation of the sharia. Therefore, in these two countries specifically, “public official defamation” and “incitement” offenses have the widest scope and the harshest punishment, sometimes reaching capital punishment. Egypt, Qatar, United Arab Emirates and Bahrain’s constitution recognizes the sharia law as their main source of legislation. However, the sharia law only plays a role in one or more areas of the legal system. Morocco and Egypt’s criminal laws have followed the European model without sharia-based provisions. In the United Arab Emirates, both Islamic and secular laws govern criminal law. Therefore, in all these countries except Saudi Arabia and Iran and in most cases, judges have to abide by the written laws.

#### **Public Official Defamation**

All countries included in this research whether authoritarian (Saudi Arabia, Iran, Bahrain, Egypt, Qatar, UAE), competitive authoritarian (Morocco) or democratic (Lebanon), criminalize public official defamation and give more protection to public officials than to private individuals. With the exception of Qatar, truth is not a defense in any of these countries.

All authoritarian and competitive authoritarian countries have laws that include provisions related to “harming the reputation of the state,” “offending the King,” “insulting the Supreme Being,” and carry harsh punishment ranging from one to twenty years of imprisonment. However, the public official defamation laws of authoritarian countries such as Saudi Arabia, UAE and Bahrain have harsher sentences and broader provisions, making it easier for judges to target government’s critics. Judges in Saudi Arabia, Bahrain and Egypt interpret public official defamation provisions very broadly so as to criminalize the mere act of “communicating with international organizations.”

Authoritarian and competitive authoritarian monarchies (Morocco, Bahrain and Qatar) still rely on lèse majesté laws to punish anyone who offends the reigning sovereign. It is punished by imprisonment with terms ranging from one to seven years. Although Saudi Arabia heavily punishes any offense against the ruler, there are no written lèse majesté laws. This offense is governed by arbitrary Islamic laws, which are subject to the subjective interpretation of the judiciary.

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<sup>1</sup> Otto, Jan Michel (30 August 2008). *Sharia and National Law in Muslim Countries*. Amsterdam University Press, page 635–636.

It is to be noted that two of the authoritarian countries (Saudi Arabia and Bahrain) have recent laws that include provisions related to “public official defamation.” Until the enactment of the cyber-crimes law in 2006 and the anti-terrorism law in 2014, Saudi Arabia did not have any laws governing public official defamation, which was governed by unwritten Islamic rules and their interpretation by Saudi judges. Although Lebanon’s penal code criminalizes public official defamation with a sentence ranging from six months to two years, the penal code dates back from 1948 and the sentence is rarely applied.

It is to be noted that countries with very low ranking for press freedom<sup>2</sup> (Saudi Arabia, Bahrain, UAE and Qatar), rely heavily on cyber-crimes law to silence those who use social media to speak up against the government or call for protests.

### **Incitement laws**

The incitement offense exists in the laws of all these countries under different wording. In the UAE “endangering national security” or “infringing on public order,” and “instigating hatred” are used to punish those who express a critical opinion or contradict the government’s narrative whether in public or on social media. In Saudi Arabia “harming the public order”, “inciting the public opinion against the Kingdom,” and “inciting protests” has been broadly interpreted to target activists for using Facebook to call for protests. In Iran, “propaganda against the state” is a charge commonly used to punish those who oppose the political system. In authoritarian countries, incitement laws tend to be drafted in vague terms so that judges can safely target dissenters and anti-government activists. It is to be noted that the legal system of all authoritarian and competitive authoritarian countries in this study follow the Sharia law which allows, to various degrees, wide discretion for judicial interpretation of the laws. In addition, in some countries such as Saudi Arabia and Iran, judges can apply their own interpretation of the Islamic texts in the absence of written laws governing a specific case. These circumstances create a hostile environment for peaceful activists, which are usually targeted by those in power.

After 2011, most authoritarian countries in the Middle East and the North African region have enacted or amended their anti-terrorism laws (Saudi Arabia, Bahrain, Egypt, UAE). These laws all include vaguely worded provisions, which have been interpreted by the judiciary to punish legitimate speech, or peaceful acts deemed critical to the government. Egypt has relied on its newly enacted anti-terrorism law to imprison activists who participated in protests against the regime. Imprisonment, with terms ranging from one year to 20 years and even to life imprisonment (Qatar) is a common punishment for the incitement offense.

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<sup>2</sup> See Freedom House country ranking for press freedom: <https://freedomhouse.org/report/freedom-press/2015/saudi-arabia>; <https://freedomhouse.org/report/freedom-press/2015/bahrain>; <https://freedomhouse.org/report/freedom-press/2015/united-arab-emirates>