

**Unified for Freedom
Arab Judiciary Approaches on Freedom of Press and Media.**

Executive Summary
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Introduction

This study was set up considering ٢ main aspects:

First:

The opinion poll that took place on the ٥ target countries, namely: Jordan, Egypt, Lebanon, Yemen and Bahrain.

The sample included ٣٨٢ participants composing of ٥٣ judges, ١١٢ attorneys, ١٠٧ journalists and media figures, ١١٠ politicians, as well as ٤٤ women (١١,٥ % of the participants).

The selected segmentation represents the elite figures in some domains of direct/indirect relation with freedom of mass media as a notion, and the study aimed at knowing their opinions in some issues pertinent to the said concern.

These issues start with independence of judicial authority, and end up by discussing the controversial issues in each media domain, the ruling Codes that govern it, as well as the working of judges who rule according to these Codes.

Second:

The analysis of ٣٧٨ litigated cases in connection with media that were examined and got sentences in the ٥ target countries between ١٩٩٩ to ٢٠٠٩.

The litigated cases include: ١٣٠ cases from Jordan, ٨٥ cases from Lebanon, ٧٠ cases from Yemen, and ٢٧ cases from Bahrain.

The said cases depict a close image of the applied judicial rules that govern each country separately and the ٥ countries in general. .

The study is appended with more than ١٥ attachments including:

- Comparisons between the applied laws and constitutions of the target countries.
- Survey reports and comparisons between the applied judicial standards in the ٥ target countries.
- The ٤ chapters that compose the study include more than ٤٠٠ illustrative tables and figures.

Chapter one of the study is dedicated for describing the reality of mass media in the Arab world through ٤ main themes, namely:

- ١- Mass media in the Arab world.
- ٢- The constitutional and judicial situation of mass media in Arab countries.
- ٣- Cultural norms that determines the scope of media liberty in Arab countries.
- ٤- Socio-economic factors that affect mass media in Arab world.

The study delineated that that the last five years (٢٠٠٤ : ٢٠٠٩) have witnessed a remarkable qualitative upturn of media in the Arab world not only in terms of its variable modalities but also in terms of the intensive usage of internet in order to transmit information, opinions, news and comments.

This internet channel has indeed made of electronic journalism a substitution of the traditional printed press. Thus, there is no wonder that it appeals to a wider scale of users who find in it an easy source of information, and a relative cost-effective one compared to the printed and audio-visual ones.

The study has examined the progress of mass media in the Arab world starting from the new millennium and recorded a number of observations:

- ١- There is a growing concern with the audio-visual channels of mass media in the Arab World. Moreover, all Arab States - with the exception of Lebanon - exercise a monopoly policy of their satellite audio-visual channels that have reached ٦٧ in number.
- ٢- The State-owned media channels lack specialized contents , and their programs are rather characterized by " broad-spectrum "
- ٣- Capitals of various satellite channels are owned by Saudi Arabian figures (e.g. ART, Orbit, Rotana, El Majd, etc) who try as well to own other Arab T.V channels.

- ٤- The private-owned media channels or those that are partially owned by the States are characterized by variety and specialized contents more than those owned/ managed primarily by the Arab States.

The study has again noted that:

- There are about ٢٥٠ Arab Media Authorities that transmit or re-transmit satellite channels through their networks, ٢٤ of which are governmental authorities and ٢٢٦ are private ones.
- The said authorities are totally responsible for broadcasting about ٥٢٠ channels with different objectives and languages.
- ١٣٠ channels of those are characterized by variety of programming, or the so-called miscellaneous channels.
- ٣٩٠ channels are specialized in different domains.

The striking thing is that regardless of the owner and the nature of the materials subject to broadcast, all the provisions restricting freedom of expression in general apply to this newcomer (satellite channels) whether the Arab States have managed to enact laws regulating the methodology of radio/television broadcasting, or not.

These restricting provisions include the penal Codes for defamation, slander and insult, spreading rumors or false information, and are not limited to other legal articles that are implicitly restricting freedoms of expression.

The study has shed light again on some common problems in Arab Press, namely:

- ١- **Scarcity of information.** Indeed, all Arab countries lack the legal framework that allows journalists to have access to the needed info in a feasible way. The only exception is Jordan that has enacted a law to help journalists in this concern. Yet, it still doesn't satisfy their minimum expectations.

As a result of this lack of info, many newspapers face legal problems the least of which are the indemnity suits that are raised against publishing news or comments based on rumors, or even founded on true facts that lack evidences due to unavailability of info and/or needed documents.

- ٢- **Lack of financial sources.**

As a matter of fact, managing a newspaper is highly costing, especially if it is to cope up with the technological progress in this domain.

As a result, newspapers usually suffer from the control of capitals and ads either to start-up or to go on working.

This made of seeing independent newspapers apart from the dominance of the State or businessmen an unachievable goal.

- ٣- **The legislative systems in Arab countries.**

Newspapers as institutions are totally incurred with indemnity damage resulted from publishing untrue info in Arab countries, and scarcity of info sources is not an excuse in this concern.

Actually, in some countries like Egypt, the newspaper – as an institution – is jointly responsible with the journalist to pay all the needed money resulted from indemnity suits.

- ٤- **The poor educational systems** that don't help to bring in qualified candidates to work as journalists. Ironical enough, many graduates of specialized faculties of journalism in many Arab countries lack the needed professionalism that enables them to join press domain quickly.

- ٥- **The difficult economic level of target readers** in many Arab countries, which makes it difficult to rely on the sold copies of a newspaper to cover its expenses and assure its stability.

The study has also pointed out a number of problems that are still facing many journalists in Arab countries and can be summarized as follows:

١- **Lack of a stable editing policy in many Arab press institutions.**

This is usually resulted either from frequent changes of editing policy along with change of Editors-in-chiefs, or with regard to the growing scale of ads from a certain part, or again due to some pressures imposed from another country.

٢- **Low salaries compared to economic status of the country.**

This fact has resulted on the so called "freelance journalist" who usually resorts to work in many newspapers of different orientations to sustain. Thus, he may rephrase his news/reportages in the light of the approach of each newspaper.

٣- **Centralization of Union's activities in one official Syndicate in many Arab countries.**

Indeed, many target countries don't have except one syndicate that joins all those who work in Press. Moreover, some countries also penalize any journalist who exercises this job without being an active member of this Syndicate.

٤- **The organizational structure of Press Syndicates** is composed of owners and editors-in-chiefs of newspapers together with some editors in many target countries. This actually hinders the effectiveness of syndicates' activity in defending the rights of editors and journalists.

Lebanon is almost the only Arab country that has ٢ Syndicates; one for newspaper owners and another for Editors

٥- **Weak legal support to junior journalists compared to senior ones.** Thus, the later always find many lawyers ready to defend their cases (if any)

With regard to electronic media, the study again reveals that many Arab States show reluctance in providing internet services to the public. This attitude can be interpreted as an implicit wish of reinforcing the monopoly and hegemony of States on the sources of information.

The study reaffirmed that the constitutions and laws – even the newly enacted ones - are not enough to ensure freedom and rights of citizens, and this applies to all human rights at the core of media freedom.

Practical enough, freedom of expression in media entails the existence of a cultural milieu that upholds this value as part of individuals' freedom, considering it a key step towards human progress.

Yet, the current cultural/political aura in Arab countries is rather reinforcing values of obedience and discipline, dependability and subordination instead of promoting principles of participation, equality and mutual tolerance. Moreover, the restricting social codes in Arab countries again apply pressures on freedom of individuals in general.

The study has also pointed out that there are three additional determinants impeding freedom of media in the Arab world in general, namely:

- ١- **Multiethnic structure of Arab societies:** Despite the fact that the Arab countries are composed primarily of Arab Muslims Sunni, yet there are relative varieties of ethnicity based on language, religion or sect.
- ٢- **Political and Knowledge Literacy** on a wide scale in Arab countries as echoed in many reports. This normally hinders the freedom of mass media in general, and shall delay any attempt of progress within traditional anti-liberal societies.

- ٣- **Retreat of middle class in Arab societies.** Indeed, authority and wealth are monopolized by governments or particular families and allies of ruling figures in many Arab countries. Whereas, the middle class category is excluded from enjoying equal social and political rights, or having an equal share of wealth. This normally has a negative impact on orientation of mass media, as this middle class is usually the key target of media elsewhere.

Chapter one of the study has concluded also that the economic-political status in the Arab region has its direct impact as well on media, due to:

- The aggravating socio-economic problems in many Arab countries.
- The subordination of wide scale of citizens to the States, which reinforces the monopoly of the later on the editing/working policies of newspapers, T.V and many radio channels.

Chapter ٧ of Part I of the study is dedicated to the judicial and judge's situation in the ٥ target countries, in the light of the governing rules that grant independence of judicial systems in the said countries.

These rules were declared by representatives of Civil-Community in Beirut on ١٩٩٩, prior to their acknowledgement by the Arab States in Skarika Conference of ٢٠٠٧.

Part I of the study ends by reviewing the approved international standards that do not threaten the independence of judicial systems anywhere. These standards state that:

- ١- Criticizing courts or judges is a social right that doesn't blemish the independence of judicial authority. Yet, discussing or criticizing judges/judicial verdicts ought in all cases to proceed with no indignity or contempt to both.
- ٢- Freedom of expression is granted to judges, and this is a non-negotiable or compromised right. Yet, judicial authorities are required as well to show absolute vocational commitment apart from their political tendencies.
- ٣- With regard to the relative granted independence of judicial systems, judges should be permitted to discuss constitutionalism of laws. Then their views are either to be refuted by a Higher Court for affirmation/negation, or to be examined by a Constitutional Court assigned for assessing the constitutionalism of laws. These Constitutional Courts should be accessible to fulfill the objective of their establishment.
- ٤- The structure of the Judicial Councils usually echoes how independent the judicial regime is. Indeed, as much as the judicial council is composed purely from judges and headed by a judge as long as independence of judicial system is assured, and vice versa.
- ٥- Although independence of judicial system from legislative authority is a key issue, yet a direct channel should exist between the Judicial Authority and the Parliament, so that the former may send to the later an account of its annual financial needs to be inscribed in the State Budget.

Indeed, the lack of this direct channel undermines the independence of the Judicial Authority

The study has pointed out that although all the Arab constitutions and laws approve independence of judicial authority and judges, to issue verdicts apart from any influences excluding legal references and their consciences - the real image is practically different.

Indeed, most Arab political systems - including those in the case study - are still unable to grasp the concept of separation between authorities (legislative, constitutional and executive). This is either due to their tribal structure or military backgrounds that grant the Executive Authority solely to the ruler (a king or a president). Consequently, it is usually the agenda of the Executive Authority that directs the other authorities (Legislative, Constitutional) to its ends.

The Part dedicated to the status of judges in the target countries ends up by some observations, namely:

- ١- The judicial systems in the target countries suffer from relative degrees of interference on behalf of the executive authority in their affairs.
Egypt is probably the least one to witness this interference, particularly after the legal amendments of the Judicial Authority Law on ٢٠٠٦.
- ٢- The judicial inspection authority – that can dismiss a judge or at least delay his promotion – is still granted to the Minister of Justice in the ° target countries.
- ٣- The Judicial Councils in the target countries – except Egypt – are headed either by the king or the president, who may appoint the minister of justice on his behalf in this post.
This normally results on a flagrant overlap of powers between constitutional and executive authorities. Thus, the decision of these judicial councils may be either dictated by the executive authority, or affected by the embarrassment for having the ruling figure as a senior there.
- ٤ – The budget of judicial institutions and the salaries of judges are decided primarily by the ministries of Justice in the target countries. This may consequently impose an indirect pressure on judges who get their wages from the said ministries.
- ٥ – The existence of special courts, whether being military or a mixed of military and civil juries, and notwithstanding that their verdicts are subject to appealing or complain - practically undermine the independence of the judiciary system. This is simply because the authority-rule is granted to non-qualified figures (not necessarily on the professional level but rather on the moral level)
- ٦- The Prosecution, though representing part of the judicial authority in many target countries- is put entirely under the supervision of the minister of Justice who represents the executive authority. Thus, its independence is weakened, even if the supervision of the minister of justice is limited to administrative tasks, while the technical affairs are granted to the public prosecutor.
- ٧- The target countries suffer from accumulation and delay of suits' settlement. This is partly due to lack of sufficient number of judges, and again due to reluctance of States to implement the verdicts. There is no doubt then that delay of settlement and non-implementation of sentences undermine confidence in justice, and threats judicial independence.
- ٨- With the exception of Egypt, judges are not allowed in the other target countries to establish syndicates or clubs of their own.
- ٩- With the exception of Lebanon, the Arab judicial institutions in the target countries don't provide a real service in raising the professional competence of judges.

Chapter ٣ of Part I of the study is dedicated to legislation in the target countries and its conformity with the international standards.

The study pointed out that the legislative systems are surprisingly similar in the target countries as well as many Arab States. The reason for this similarity is not only because of their like cultural and religious backgrounds, but also due to the similarity in their political regimes that depend on succession of authority (being a kingdom or a republic)!

Chapter ٢ of Part I of the study also referred to international standards relevant to crimes of religions' contempt through media and press. Its conclusion was: The target countries witness a controversy of compromising freedom of expression in relation with freedom of religions / contempt of religions.

Moreover, the study has made a trace of the approaches of international judicial regimes on crimes of defamation and contempt of religion in Europe, USA and Latin America.

After reviewing the legislative and constitutional systems that govern media in the target countries the study denoted a number of basic features that can be summed up as follows:

- ١- Yemen is the only Arab country among the target countries where the State is committed to act in compliance with the international conventions and Universal Declaration of Human Rights. This attitude actually ensures a superior strength to those international Charts over common legislation, raising them to the rank of the Constitution.
- ٢- Lebanon is the only target country whose Constitution doesn't endorse a special protection of privacy, including protection of confidentiality on correspondence.
- ٣- Bahrain is the only target country that explicitly approves respect of freedom of e-mails in Article ١٦ of its Constitution. Whereas, Egypt and Yemen had ensured freedom of correspondence in general in articles ٤٥ and ٥٢, respectively in their Constitutions.
- ٤- Freedom of expression is already granted in the Constitutions of the target countries, namely in Article ٤٧ of the Egyptian Constitution, Article ١٥ of Jordanian Constitution, Article ١٢ of Lebanese Constitution, Article ٤٧ of Yemeni Constitution, Article ١٢ of Bahraini Constitution. Yet, it is always bound by the laws and bylaws of the target countries that are practically responsible for regulating how each person may express his opinion and the limitation of exercising this right.
- ٥- The Constitutions of Egypt, Bahrain and Lebanon grant freedom of expression to everybody whether he has the nationality of the State or not. Whereas, this right is only granted to citizens in Jordan and Yemen, and this is an unjustified narrowing of freedom that should be granted to everybody regardless of his nationality as long as he lives in the same homeland.
- ٦- Article ١٧ of the Yemeni Constitution and Article ٤٩ of the Egyptian Constitution state that freedom of scientific, literary and artistic research is granted by Constitution probably as part of freedom of expression. Whereas, the other Constitutions of the target countries didn't tackle this right.
It is worth mentioning that the Egyptian legislator didn't bound the granted protection of scientific, literary and artistic research to the provisions of law, unlike the Yemeni legislator who associated this protection with their compliance with the spirit and targets of Yemeni Constitutions. This condition is actually unjustified because the nature of scientific research makes of it something renewable and progressive that shouldn't be bound to the stipulation and objectives of any law however elite it is.
- ٧- It was only the Egyptian Constitution among others of target countries that granted press the title of " authority " in its article no ١٠٦ that says " *press is an independent authority that exercises its vocation in the manner prescribed in the Constitution and the Law*" However, the study sees that this stipulation doesn't give legal weight to freedom of expression through Press.
- ٨- Freedom and independence of press are just granted in Article ١٤ of Bahraini Constitution and Article ١٠٧ of the Egyptian Constitution among the other target countries.
Yet, the study has pointed out that these texts are not of a great value to press and on the contrary may undermine them. This is because, freedom and independence of press is associated according to the Egyptian legislator with the provisions prescribed by the Constitution, and the same approach was adopted by the Bahraini legislator.

٩- Articles ٤٨ and ٢٠٨ of the Egyptian Constitution, and Article ١٥ of the Jordanian Constitution are the only ones among those of target countries to prevent suspension of newspapers by administrative means. The Egyptian Constitution adds another provision that ban censorship on newspapers. Nevertheless, both the Egyptian and Jordanian Constitutions agree that it is permissible to impose limited censorship in issues related to public safety and national security if the emergency case is declared by the State. This exceptional concept is respected though not totally acceptable.

١٠- The Egyptian Constitution was the only one among those of target countries to state the freedom of issuing newspapers according to its article no ٢٠٩. Yet, this right is confined to public artificial persons and not to natural persons. This condition is inconsistent with all the international conventions, because it results on depriving an important sector (artificial person) from a fundamental means of freedom of expression (issuing newspapers).

Moreover, article ٢٠٩ of the Egyptian Constitution has put newspapers under the so-called "community supervision "when it says "*Newspapers' ownership, financing and funds are subject to supervision of people in the way prescribed by the Constitution and the law*" The Jordanian Constitution adopted the same notion on item ٥ of Article ١٥ that stipulates that newspaper's funds are regulated by the Law.

In our view, both texts imply restriction on newspapers more than freedom, as they impose exaggerated censorship on their financial resources.

١١- The Egyptian Constitution is the only one among those of target countries to state an explicit text granting journalists the right to information access according to the provisions of its Article no ٢١٠.

Although, no bylaws are yet enacted to facilitate the mechanism of information access, yet the Egyptian Constitution is still ahead considerably for other Constitutions of target countries.

Article ٢١٠ of the Egyptian Constitution again stipulates that no power shall be exercised on journalist except that of Law. This sentence resembles that describing the power of judges who just rely on Law and their conscience during their work.

١٢- The Egyptian Constitution alone states the existence of a Supreme Council of Press as stipulated by its article no ٢١١ "*A Supreme Council shall support the freedom and independence of newspapers, maintaining the basic foundations of society, and ensure the safety of national unity and social peace, in compliance with the Constitution and the Law, that shall determine its mechanism of formation, tasks and relation with the State authority*"

The study has pointed out that the legislations relating to mass media in the target countries are almost identical, particularly regarding crimes and penalties.

The study summed up the general features of the legislative systems organizing press work in the target countries as follows:

١- Press in Yemen and Egypt (two out of ٥ target countries) has a law of its own regulating its work. Whereas, Press in Jordan, Bahrain and Lebanon is subject to the provisions of Printings and Publication Laws. Moreover, Egyptian press alone among those of other target countries is regulated by ٢ channels; an independent Press Law no ٩٦ of ١٩٩٦ and Publication Law no ٢٠ of ١٩٣٦ amended by law no ١٩٩ of ١٩٨٣.

٢- Egyptian Press Law is the only one to grant press a public authority, allowing it to exercise its mission with reliable freedom.

٣- The Jordanian, Yemeni and Egyptian Laws have texts granting priority of information access to journalists, and this advantage is not established by laws of other target countries.

٤- A newspaper cannot be issued in the ° target countries without a prior permission from a special Authority that differs from one place to another. The Supreme Council of Press is the responsible authority of granting this permission in Egypt. Whereas, this right is entitled to the minister of Information in Lebanon and Yemen. It is likely granted to the Cabinet in Bahrain and Jordan following the review of the concerned minister. Yet, Bahrain is almost the only Arab country that adopts a special regime regarding publishing of business pamphlets by commercial companies to promote their products.

- ٥- The Egyptian legislation deprives the right of issuing newspaper to natural persons and ensures it only to artificial persons. Moreover, the Egyptian legislation requires that the companies to issue a newspaper have the legal form of Joint Stock Companies. This is not the case with the other target companies where natural and artificial persons are equally granted to get a press license as long as they conform to the conditions prescribed by the Law. It is worth saying that legislations of ٤ target countries (Egypt, Jordan, Yemen, and Bahrain) are virtually identical in their provisions of tightening control over the budgets of newspapers and sources of funding.
- ٦- Egypt is the only country that sets a complete system of state-owned newspapers and the so-called national newspapers, and this system is not known in other Arab countries.
- ٧- Egypt, Jordan, Yemen and Bahrain commonly prevent seizure of newspapers or disabling them by an administrative act. Whereas administrative disability may take place in Lebanon according to Articles ٣٥, ٤٣ of the Law.
- ٨- Legislations of target countries make it mandatory for a newspaper to publish responses and corrections. Indeed, regulatory laws governing press in Egypt and Lebanon impose a fine on newspapers that don't abide to this item. Whereas, penalties of non-publishing of responses and correction are implied in other Charters relevant to Penalty Law and Publishing Law in Jordan, Bahrain and Yemen.

The general features of Penalty Laws in the target countries are almost identical in many articles pertinent to publishing crimes in mass media.

- ١- Penal Codes in the target countries have expanded the concept of publicity as to include all possible means of declaring ideas, whether being already discovered and used, or those that may be introduced by scientific evolution in the future. Article ١٤١ of Egyptian Penal Code evokes an interpretation of this concept.
- ٢- Incitement through articles, speeches or otherwise is sometimes deemed as a separate crime according to Laws of target countries (e.g Article ١١٨ of Jordanian Law which incriminates any act of incitement that may blemish the relation between Jordan and foreign countries, or may expose it to war or breach its neutralism) Additively, the inciter may be considered responsible for the results of incitement and accordingly a partner in the crime.
Crimes of incitement are serious because they impose heavy restrictions on the freedom of expression. Indeed, any article, speech or TV interview may be accordingly deemed as an act of incitement.
- ٣- Dissemination of any false, inaccurate, exaggerated news or tendentious rumors are punishable according to the Laws of target countries, whether these acts took place abroad and led to deformity of the State image, or loss of confidence in its economy, or was at home, leading to the spread of fear or panic, disturbing public order, or weakening the spirit of nation.

- ٤- Slander and defame against individuals are punishable by virtue of Penal Codes in the target countries. This applies also to contempt or insult of the head of the State in any form, and goes to humiliation and offence of State institutions related to the political regime (e.g. the parliament). It is unlikely in such tight atmosphere to imagine that the armed forces may be disparaged in Arab countries in general and in the target countries in particular.
- ٥- Penalty Codes of the target countries grant substantial protection for public figures and harshen the penalty on he who dares insult or abuses him. Yet, these Codes again grant the accused person the right to give evidence of accuracy of what he alleged, and to be acquitted if his accusation to the public figure were proven to be true.
- ٦- Article ٢٨٧ of the Lebanese Penal Code Lebanon doesn't ban presentation of evidential facts if the defamed person is the President, provided that these facts relevant to his public job are proven right. Likely, Egyptian and Yemeni Penal Codes don't mind presentation of evidential facts against the president as a public figure. Yet, Article ١٩٧ of Yemeni Penal Code and Article ١٧٩ of the Egyptian Penal Code prohibit thereof abuse of the President.
- ٧- Yemen is the only State among the target countries that includes whipping in Article ٢٨٩ of its Penal Code that says *"Everyone who accuse a chaste of committing adultery or negate the affinity of his kids from a married woman and fails to prove what he claimed shall be punished by ٨٠ whips"* This punishment is of course a humiliating and dehumanizing penalty.
- ٨- The Egyptian Penalty Code is the only one among those of target countries that incriminate religious men in case they made a speech against the government in one of the worshipping places.
- ٩- Article ٥٨٥ of the Lebanese Penal Code states *"The judge has the right to nullify penalty of one or both parties if the slander was mutual or if the insulted was proven to have committed an inappropriate act"*. This text has no counterpart in the legal texts of Penal Codes of the other target countries.
- ١٠- Bahraini Law is the only one among those of target countries to deem provoking as a reason for tightening the penalty of slander or insult. Indeed, Article ٣٦٦ of Bahraini Law stipulates that *"slander or insult through the phone is penalized by a prison penalty for a period that doesn't exceed ٦ months and a fine that doesn't exceed ٥٠ dinars if it takes place without provocation and without existence of someone else other than the insulted person"*.
- ١١- All the target countries agreed to protect the Criminal litigation from external influences, by preventing publishing of any info that may influence judges or any part involved in the litigation. This concept is stated by Article ١٨٧ of the Egyptian Criminal L٢٧/٥/ ١٩٩٣.aw, Article ٢٢٥ of the Jordanian Criminal Law, and Article ٤٢٠ of Criminal Code no ٤٢٠, modified by Code ٢٣٩ dated. Yet, the Lebanese Law implies the least penalty regarding protection of criminal litigation from influence of publishing compared to the other ٥ target countries.
- ١٢- The Laws of target countries agree on exaggerated protection of religions, sects and ethnics against insult undermine or contempt.
- ١٣- The Egyptian Law is deemed a pioneer among the target countries regarding its Criminal Codes against discrimination.

١٤- Editors in chief, publishers or distributors bear joint hierarchical liability by virtue of the Penal Codes of the target countries in litigated suits. So, they may be punished respectively regardless of their real participation/ involvement in the crime. This concept is stipulated by Article ١٩٦ of the Egyptian Penal Code, Article ٧٨ of the Jordanian Penal Code, Article ٧٧ of the Lebanese Penal Cod and Article ٩٣ of Bahraini Penal Code.

The study denoted that there are common features among legislations pertinent to printings in the target countries, namely:

- ١- The target countries (Egypt, Jordan, Yemen, Bahrain, and Lebanon) require from anyone who wants to establish a printing house to extract a license for this, or at least to inform the concerned authorities with his willing to establish it, imposing penalty on he who doesn't abide with this compulsory requirement.
- ٢- Yemen, Jordan, Lebanon and Bahrain (٤ target countries) set a strict scheme of observing printings , by making it compulsory that the printing house keeps a log of all its printings including the name of the writer, the topic , etc
- ٣- Bahrain is the only target country that requires a prior agreement before printing anything. This is echoed in Article ١٧ of Bahraini Act of Printings.
- ٤- Oversees printings are subject to censorship, and may be even banned from distribution in Egypt, Jordan, Yemen and Lebanon by virtue of Law in these target countries.

Common judicial rules among the ٥ target countries can be summed up as follows:

- ١- All the judicial provisions in the target countries start by a preamble that upholds the value of freedom of expression and the significance of protecting opinions. Yet, we see that this introduction is usually "deceiving" because it ends up in most cases by the word "but" followed by lengthy talk about social values and codes.
- ٢- Jordan and Bahrain consider "the good will "as one of the motivations that may be taken in consideration as regards the limitation of penalty, yet it is not view as groundwork of the crime. This is neither the case in Egypt nor likely in Yemeni and Lebanese judicial regimes. Indeed, a journalist in Egypt and Yemen in particular has to proof that he has written what is deemed as an act of slander after double checking and investigation in the light of which he thought that what he wrote was based on justified reasons.
Interpretation of judicial texts in the target countries mostly agree that "slander offense" doesn't need a particular criminal intention and that the broad criminal intention is enough in this case. This explanation is based on the fact that the slanderer is aware enough that the implied claims against the abused shall lead in case of proven right to the contempt of the later and his subject to punishment.
- ٣- The judicial regimes in the ٥ target countries agree that if a public servant is criticized the defendant has to submit full, real and legally approved documents, otherwise his proof shall be deemed imperfect. Consequently partial proof has no value and doesn't establish a presumption of innocence for the journalist acquittal.
- ٤- The judicial regimes in the ٥ target countries agree that it is up to judges to define what may be deemed, whether through printings, photos or drawings - as a breach of public morals and the prevailing religious considerations in the society.
- ٥- The evidence of publicity is established with the availability of ٧ elements;
 - a- Distribution of a written document that includes abusive sentences of some people regardless of their number.
 - b- Intention of the defendant to distribute/broadcast what is written.

In the light of both elements, the judicial regimes in the 20 target countries agree that the slander offence is not affected by the limited distribution of a newspaper that includes abusive sentences, even if the said journal was remote just after distributing 2 copies only.

- 7- Judicial texts in all target countries agree that the offence of slander/insult occurs as long as one or both took place in public with the conditions stated before and regardless of the presence or absence of the insulted.
- 8- The judicial texts in all target countries agree that freedom of press is not absolute and is bounded - as any other right - by some restrictions pertinent to the basic social principals from one hand and non-prejudice of individual's rights from the other hand.
- 9- The judicial texts in most target countries agree that the slander offence occurs weather the publisher was the first one to convey the false news or even if he quoted it from a different source. This simply means that the saying that "*the false news was quoted from a European or a local newspaper*" doesn't change the fact that the offence took place.
- 10- Freedom of a journalist is part of the freedom granted to ordinary individuals, and shouldn't exceed this limitation except by virtue of a particular legislation.
- 11- The critic has to consider honestly the public interest in his act, and the judicial system is to define the orientation and criteria of this public interest. This implicitly means the judicial regime gives itself the right to define the limitation of public interest with no standard measures.
- 12- All target countries agree that indignity of the Republic President is an offence subcategorized under "Public Order Offences" since it is against a public servant. Thus, there is no need to file a complaint in this concern; as the public order involves showing due respect to the person of the President.
- 13- The Republic President - like any public servant-is subject to criticism event if it is of a sharp tone as long as its wording doesn't violate the disciplinary norms bounding freedom of press, and given that the writer uses apparently innocent phrases, ambiguous words, or if the writer resorts to pun and metaphor. Nevertheless, the writer is not relieved from punishment if his sentences are clear and meaningful to refer to the head of the State republic.
- 14- Public actions pertinent to insulting judicial authorities shall not prescribe by prescription of personal lawsuits. This is because the plaintiff in this case is actually part of the State judicial regime, so the insult or slander is addressed to a public entity and not a personal one.
- 15- Playing with language or trying to cover up the personality of the insulted figure has no value as long as the wording used in describing him is clear enough to make him known and to blemish his fame. This is why he who commits this act of playing with language deserves severe punishment by virtue of the common judicial norms in the target countries.
- 16- Good will has no values for actions pertinent to contempt of religion, because the legislator has banned any form of prejudice against religions whatever the intention was. This is again a common judicial norm in the target countries.

Recommendations:

To: Civil Society Institutions

٣-١ "Investing in the Future"

This study is carried out as part of "Investing in the Future" project, executed by Dutch Free Voice Foundation and Center of Defending Freedom of Journalists (CDFJ) in Jordan. The program covers ٦ Arab countries, ٥ of which were mentioned in this study and the sixth one is Morocco whose situation shall be discussed later on for its particularity. The program consists of lawyers and media men who belong to active or supposedly active groups in the ٦ countries.

٣-١-١ The program aimed at:

- Raising vocational awareness among media professionals on regulatory legislative systems of their job.
- Raising the awareness of media professionals concerning the legal problems that may expose them as a result of revealing their opinions.
- Raising awareness of media professionals on property right issue and its importance.

The study has proved that breach of law on behalf of media professionals is due mostly to lack of awareness and not to willfulness. Yet, as it is well known "*ignorance of law doesn't deter punishment*".

The intensive awareness campaigns thus aim at addressing a wide scale of journalists and media professionals through non-traditional means. These means comprise limited discussion sessions, and include distribution of simplified leaflets that elaborate the applied legal norms of a particular topic, hoping that this may be helpful to avoid pushing them into legal courts.

٣-١-٢ Similar campaigns need to address politicians and public figures in Arab societies namely regarding :

- The significant role assigned to media in maintaining freedoms and supporting public figures themselves.
- The limitation of permissible criticism and its importance
- European and American examples where media is sometimes harsh towards some public figures, yet the later remain tolerant towards this.
- Importance of media as a partner and not an enemy.
- Helping media professional to access information so that they don't get to depend on rumors.

٣-١-٣ Raising the awareness on the important role of media to judges.

Indeed, despite the fact that civil institutions can hardly work directly with judges, as this is rejected by many authorities in charge, yet this may happen through innovative means, like:

- Distribution of leaflets on media's importance and the difficulties that faces media professionals.
- How media professionals work and the methodology of press, as well as the norms of decision making inside newspapers.

Issuing quarterly bulletin that includes like issues may help judges to appreciate the nature of media work, and shall have a positive impact on considering remission of penalty when a verdict of guilt is settled.

٣-١-٤ It is important to hold regular open discussions between media professionals, public figures and judges to ensure that:

- Each party can see the other directly and discusses with him the problems relevant to his field of work.
- Each party may understand the nature of work of the other party.
- Accumulated misunderstanding between media professionals who are subject to trials and judges gradually disappears .

The minutes of these discussions shouldn't be published to ensure optimum privacy and frank.

٣-١-٥ Short debates – of two hours - may take place among participant/ non-participant lawyers in the project to discuss a significant issue related to media, or to refute a verdict, elaborating the weak points that faced the defense during the trial. The discussion may raise as well a problematic issue of media contexts and how it is regarded by virtue of law.

These short meetings are effective because:

- a- They doesn't waste time of lawyers who willingly attend it
- b- They may result on positive impacts without putting a pressure on the projects' budget.

٣-١-٦ Promoting the vocational capabilities of media professionals in general and of journalists in particular are viewed as a duty for those involved in the "Investing in the Future" project.

This project aims at setting a plan addressing a particular no. of journalists and media professionals within a reasonable period of time. Yet, traditional trainings in this framework are practically unfeasible anymore, simply because:

- a- Many newspapers cannot do without their journalists for a long time while the later are attending training.
- b- These trainings are somehow costing.

Thus, comes the need of introducing cost-effective short training methods to expand the scale of beneficiaries.

This can be doable by launching training courses in the evening during one week on one basic vocational skill. Then the following week is dedicated for a different skill, and so on.

These training courses should be followed by a final assessment, offering motivating opportunities to the distinguished trainees, like training in a well known regional, Arab or foreign newspaper.

٣-١-٧ Although many people doesn't see that the legislator's frameworks in the target countries are not too bad , yet they agree that the regulatory jurisprudence on freedom of media can be amended by :

- Annulment of penalty that restricts freedom
- Annulment of huge fines resulted from slander trials.
- Facilitation of mechanisms that assist in presenting a positive proof of slander , and considering the duty of this proof a common liability between the media professional and the plaintiff.
- Involving the judicial authority in investigating the reality of acts being claimed against public figures.
- Setting a ceiling to the payable civil compensations of the cases being tried. This is simply because the damage of slander offences is usually moral and can be repaired by publishing a verdict of guilt. So there is no need to make of these actions a means of enriching the injured person.
- Indeed the active members in "Investment in the Future" project can adopt initiatives towards amendment of regulatory legislative clauses pertinent to freedom of expression, particularly because some journalists and media professionals are already members of the Arab parliaments and are mostly keen to see these initiatives work out. Moreover, they can promote for their initiatives by holding organized discussion attended by parliament figures that belong to the majority parties to hear testimonies on journalists and media professionals' sufferings, and the necessity of jurisprudential amendments accordingly.

٣-١- ٨ Directive campaigns should be launched , targeting media professionals , judges and may be lawyers and politicians as well - to give a detailed account of serious crimes like Discrimination and Hatred that are currently growing in our Arab societies and have no clear settlement.

٣-٢ To ministries of Justice in target countries.

The study proved that the judicial system is completely manipulated by the executive authority. Yet, we believe that this situation shall not go on for ever. But until then, Ministries of justice are urged to adopt a number of measures, namely:

٣-٢-١ Co-operation between Ministries of Justice and civil institutions for carrying out a number of training courses for the judges who are involved in media offences that include:

- Actions of discrimination and incitement of hatred
- Actions of religious contempt.

The training may include as well also:

- The judicial applications of international lawsuits as defamation compared to those in Arab countries.
- Reference to international Charters in the judicial verdicts relevant to media.
- Visits to eminent newspapers to have an account on the procedure of publishing as a whole and the responsibility of each party
- Open discussions with elite media professionals on the vocational nature of journalism and media and their significant role.

٣-٢-٢ Judges may take account of the following in their verdicts relevant to media:

- Quarterly bulletins that include researches tackling media actions in general and publishing crimes in particular
- These bulletins may be of a great use as well in giving legal interpretation to vague terms like "humiliation, damage to national security/ public order, offence of public modesty, undermining the dignity of the President of the Republic. , etc

Considering these elements may be helpful to judges in assessing the damage and the due fines accordingly in these kinds of claims.

Moreover, a program for publishing researches relevant to media actions can be established in co-ordination with the faculties of law and expertise judicial institutions.

٣-٣ To Journalism Syndicates and Faculties of Mass Media.

It is recommended that Journalism Syndicates, Media Associations, and faculties of Mass Media play an active role in vocational promotion by:

٣-٣-١ Activating and speeding up the disciplinary penalty forced on members who have deviated from the Vocational Code of Ethics. These disciplinary measures have to be publically make known of so that a wider sector of social community gets to believe in the credibility of media professional's impeachment as a substitute of resorting to judicial procedures.

The Syndicates are expected as well to activate the work of Reconciliation Committees between media professionals and those who were badly hurt from their deeds. These proceedings may include forcing the impeached journalist to pay the needed compensation to the hurt person, which will also reduce the recourse to the judiciary.

٣-٤ Bar Association - Civil Society Organizations

Both are urged to:

٣-٤-١ Organize evening training for lawyers on how to deal with judicial procedures relevant to Defamation Offences in general, to introduce a staff of lawyers specialized in this kind of lawsuits.

٣-٤-٢ Provide legal advisory service to newspapers and other media channels prior to publication.

This service shall depend primarily on staff of lawyers who undertook courses in promoting vocational capabilities. Indeed, this shall be an effective means of avoiding the pitfalls that face many newspapers on account of rush publishing of uncertain news, or due to lack of the appropriate legal experience in this concern.

This issue is really serious, and we should make use of the facts included in this study to raise the public awareness on the important role assigned to media in the progress of our Arab communities, bearing in mind that achievement of a goal is assured the moment we are committed to it.