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Content Restrictions

in

Arab Press and Publications Laws

For many years, countries in the Arab Middle East have ranked low on various assessments of local press freedom. For example, Bahrain, Egypt, Iraq, Libya, Saudi Arabia and Yemen all rank near the bottom of the 2021 World Press Freedom Index prepared by Reporters Without Borders¹.

All Arab countries engage in various degrees of censorship, including reasonable prohibitions on the publication of obscene materials and serious threats to national security. However, broad and ambiguous provisions in local press and publications laws (“PPLs”) often provide the foundation for more (perhaps overly) expansive restrictions on media content.

PPLs have often been among the earliest laws enacted in many Arab countries. PPLs should be read in light of other related restrictions on press freedom, such as those contained in local penal code provisions. Moreover, in recent years, PPLs have been supplemented by other laws addressing electronic media and web-sites accessible through the Internet.

1. Constitutional Rules on Press Freedoms

Article 36 of the Kuwaiti Constitution guarantees "freedom of opinion and of scientific research," as well as an individual's "right to express his opinion verbally or in writing", subject to "the conditions and procedures specified by law." Similarly, Article 37 of the Kuwaiti Constitution guarantees "freedom of the press, printing and publishing," but subject to "the conditions and stipulations prescribed by law." In practice, these conditions, procedures and stipulations include provisions of Kuwait's PPL, which imposes imprisonment and/or fines for a large number of vaguely worded offenses.

Other Arab constitutions contain almost identical language as to rights and limitations, *i.e.*, freedom of expression and of the press are nominally recognized but only in accordance with law (emphasis added).² Similarly, Article 38 of the Iraqi Constitution emphasizes that the State shall guarantee freedom of expression, and freedom of the press, printing, advertisement, media and publication, but in a way that does not violate public order and morality.

The most significant divergence from this formulaic pattern is probably contained in Saudi Arabia's Basic Law of Governance. Article 39 of the Saudi Basic Law states:

Mass media and all other vehicles of expression shall employ civil and polite language, contribute towards the education of the nation and strengthen unity. It is prohibited to commit acts leading to disorder and division, affecting the security of the state and its public relations, or undermining human dignity and rights. Details shall be specified in the law.

2. Penal Code Rules on Press Freedoms

The UAE Penal Code (Federal Law No. 3 of 1987) contains a number of content restrictions. For example, Article 176 prohibits deliberate and public insults to the UAE President, flag, or national emblem; Article 197/2 prohibits the use of any means of communication or information technology to spread information that exposes State security to danger or is incompatible with public policy; and Article 198/1 prohibits the spread of false or tendentious news, information, rumors or provocative propaganda that disturbs public security, causes panic or is prejudicial to the public interest. Article 312 also prohibits various crimes against religious creeds and rites: e.g., offending any Islamic sacred belief or rite; insulting any of the divine recognized religions; and approving, encouraging or promoting sin.

Similar penal code restrictions exist in many other Arab countries, e.g., Bahrain (Amiri Decree No. 15 of 1976), Iraq (Law No. 111 of 1969), Jordan (Law No. 16 of 1960), Kuwait (Law No. 16 of 1960), Oman (Royal Decree No. 7 of 2018), and Yemen (Law No. 12 of 1994).

Although Lebanon has historically been considered one of the more liberal Arab countries for press freedoms, it also has one of the most extensive lists of content prohibitions contained in an Arab penal code. The following are examples of the prohibitions on freedom of expression in the Lebanese Penal Code (Legislative Decree No. 340 of 1943):

- (a) Showing contempt publicly to a foreign state, its president, its army, flag, national symbol, or its political representative in Lebanon (Article 292).
- (b) Propaganda in Lebanon, during war or upon expectation of war, which aims at weakening the national feeling or at causing racist and sectarian feuds (Article 295)³.
- (c) Any action, written statement or speech aiming at or resulting in racist and sectarian feuds or instigating dispute between religious denominations and other elements of the nation (Article 317).
- (d) Offending the president of the republic, or publicly offending the national flag or the national symbol (Article 384).

- (e) Defamatory statements through a means of publication directed at the president of the republic, a judge, or a civil servant (Articles 385 to 389).
- (f) Blaspheming the name of God publicly, or showing contempt towards religious practices and rites by any means of publication (Articles 473-474).
- (h) Violating public decency or public morality by any means of publication (Articles 531-532).

Many of these prohibitions are mirrored in the PPLs of other Arab countries, as discussed below.

3. PPLs in Arab Countries

The Qatari PPL (Law No. 8 of 1979) defines “publications” broadly as “the writings, images, compact discs, cassettes, photographs and other means of expression intended for dissemination to the general public”. As a matter of law under most Arab PPLs, web-site platforms have been treated as publishers, and web-sites treated as publications.⁴

The Qatari PPL broadly prohibits various material from being published, including any criticism of the Emir of Qatar; any ridicule of or contempt toward any of the religions or their doctrines, including any motivation of sectarian, racial or religious trends; all material prejudicial to ethics, individual dignity or personal freedom; and all material that motivates the commission of crimes or encourages hatred or sows discord among individuals in society.

The Kuwaiti PPL (Law No. 3 of 2006) contains similar restrictions. For example, Article 19 of the Kuwaiti PPL prohibits disparagement of God, the Holy Quran, the Prophets, the Noble Companions, the Wives of the Prophet, or persons who are part of the Prophet’s family, whether by defamation, slander, or sarcasm in any form of expression stipulated under Article 29 of Law No. 31 (1970) (which lists various forms of expression, e.g., speech, writing, drawing, pictures or any other means of expression of thought).

In addition, Article 20 of the Kuwaiti PPL prohibits criticism directed towards the Kuwaiti Emir, and prohibits publishing any statement attributed to him except by special permission from the Emiri Diwan (Cabinet).

Article 21 of the Kuwaiti PPL contains other broad restrictions, including prohibitions on publications:

- (a) Expressing contempt or scorn for the Kuwaiti Constitution.
- (b) Expressing insult or scorn towards judicial officers or members of the public prosecution, or denigrating the integrity and impartiality of the judiciary, or publishing something that the courts or the investigating parties consider confidential.

- (c) Insulting public morals or instigating any violation of public order or contravention of laws, or calling for the commission of a crime (even if the crime does not actually occur).
- (d) Disclosing official secret communications, and publishing agreements and conventions concluded by the Kuwaiti government before they are published in the official gazette, except by special permission from the concerned ministry.
- (e) Impacting the value of the national currency, or which would lead to worries about the economic condition of the country, or publishing news about the bankruptcy of merchants, commercial companies, banks or exchanges, except by special permission from the competent court.
- (f) Revealing what occurs in any meeting, or what is written in the papers, documents, decrees, or any papers or publications which the Constitution or any law decides should not be published, even if what was published was true and the publishing was limited to official information.
- (h) Encroaching on the dignity of a person or his/her life or religious beliefs, and inciting hatred or scorn of any kind on social groups, or publishing information about an individual's financial status or revealing a secret which would harm his/her reputation, wealth or commercial name.
- (i) Encroaching on the private life of an employee or one entrusted with a public service, or attributing statements or acts to him that are not true and which would cause harm or insult to his person.
- (j) Causing harm to the relationships between Kuwait and other Arab or friendly countries, if such is done through a media campaign.

Similar PPLs exist in many other Arab countries, e.g., Bahrain (Law No. 47 of 2002), Jordan (Law No. 8 of 1998), Libya (Law No. 76 of 1972), Lebanon (Law of 14/9/1962 and Decree Law No. 104 of 1977), Oman (Royal Decree No. 49 of 1984), Saudi Arabia (Royal Decree M/32 of 2003), the UAE (Federal Law No. 15 of 1980), and Yemen (Law No. 25 of 1990).

4. Recent Supplemental Media Laws

In addition to the Kuwaiti PPL, other restrictions on content exist under Kuwaiti laws and regulations, notably in the Audio-Visual Media Law (Law No. 61 of 2007), the Cyber Crime Law (Law No. 63 of 2015), and the Electronic Media Law (Law No. 8 of 2016).

The Kuwaiti Audio Visual Media Law prohibits the publication of content which impairs the dignity, life or religious beliefs of persons, including broadcasts which, e.g., violate public morals, instigate the violation of public order or laws, or incite the commitment of crimes.

The Kuwaiti Cyber Crime Law, pertaining to combating computer technology related crimes, provides for imprisonment for a term not exceeding 2 years and/or a fine no less than Kuwaiti Dinars 2000 and no more than KD5000 for anyone who causes harm to public morals through the information network or one of the means of information technology.

The Kuwaiti Electronic Media Law applies to “electronic mass media”, defined to include the dissemination or propagation of any materials, forms, or media services with electronic content that are produced, developed, updated, circulated, propagated or published and which circulate through the Internet or any other communication network. This latter law prohibits the same content considered illegal under the Kuwaiti Audio-Visual Media Law.

Other Arab jurisdictions have enacted similar supplemental laws. For example, under 2018 amendments to Egypt’s Media Law (Law No. 92 of 2016),⁵ Article 4 now stipulates that the Supreme Media Council has the right, for reasons of national security, to prevent the dissemination of publications, newspapers, media, or advertising materials issued or broadcast from either inside or outside Egypt if they contain any information that disturbs the public peace or promotes discrimination, violence, racism, hatred, or intolerance. Likewise, amended Article 19 grants the Supreme Media Council the authority to suspend any personal website, blog, or social media account that has 5,000 followers or more if it posts fake news, promotes violence, or spreads hateful views.

Jordanian content providers may be subject to the Jordanian Audio Visual Law (Law No. 71 of 2002), and the Jordanian Cybercrime Law (Law No. 27 of 2015). Omani content providers may be subject the Omani Cybercrime Law (Royal Decree No. 2 of 2011). Qatar has also enacted a Cybercrime Prevention Law (Law No.14 of 2014) which provides a number of so-called “Content Crimes”. Of particular note is Article 8 of the Qatari Cybercrime Prevention Law, which imposes a sentence of not more than 3 years’ imprisonment and/or a fine of not more than Qatari Riyals 100,000 on any person who through an information network or an information technology technique (i) violates social values or principles (ii) disseminates news, photos or video or audio recordings related to the sanctity of people’s private or family life, even if the same is true, or (iii) insults or slanders others.

5. Implications of Content Restrictions

Broad and ambiguous legal prohibitions leave relevant government institutions with plenty of room for interpretation to restrict press freedoms.⁶ Of course, protecting public order, religion, the smooth functioning of government, its officials, as well as an individual’s reputation and expectation of privacy, are all important social interests. But without careful and well-defined limits for applying such protection, the restrictions on the media have the potential for abuse.⁷ According to one observer, “laws must be carefully crafted to ensure that valid

boundaries do not go too far and emasculate the press. The current laws limiting the press ... are far too restrictive to allow journalists to conduct their work in a beneficial manner.”⁸

For instance, Saudi Arabia has considered discussions of Islam that contradict the essential teachings of the religion to be a violation of public morals. In 2013, a liberal blogger was sentenced to 600 lashes and seven years in prison for his website that prosecutors said “infringes on religious values”. According to the prosecutor’s charge sheet, the evidence included five postings on his site critical of Saudi religious authorities, and two postings regarding theological questions.⁹

Similarly, many Arab PPLs prohibit criticism of the ruler and other public officials. This can have the effect of stifling even legitimate criticism of government policies and actions. For example, a Kuwaiti poet was arrested last year on charges of insulting the Kuwaiti Emir, after he had filled his Twitter page with criticism of government corruption, posting lyrical verses that lamented Kuwait’s dysfunction and patronage system, and deploring the ruler’s complicity in the “unbearable” state of the country and the government’s “violating of the constitution.”¹⁰

In Egypt, the 2018 presidential election provided the opportunity for greater restrictions on press freedom: six reporters were arrested for reporting on a New York Times article that described vote buying. Although the specific charges for each journalist varied, a common component was the charge of “spreading false news in an attempt to defame the state.”¹¹

Finally, because of the various restrictions in Arab PPLs and other related laws, local journalists and their newspapers tend to self-censor their reporting. This self-censorship is often described as avoidance of crossing “red lines” – journalists learn to operate within boundaries that keep them free of government harassment. Such self-censorship often inhibits the positive role that a free press can play in these societies.¹²

ENDNOTES

¹ See Reporters Without Borders, “2021 World Press Freedom Index”, <https://rsf.org/en/ranking#>, last accessed on 4 January 2022. Jordan, Morocco, Oman, Palestine, Qatar, and the United Arab Emirates (UAE) are only ranked slightly better.

² See, e.g., Articles 23 and 24 of the Bahraini Constitution, Articles 47 and 48 of the Qatari Constitution, Articles 42 and 43 of the Syrian Constitution, and Articles 30 and 31 of the UAE Constitution.

³ Compare United Nations Human Rights Office of the High Commissioner, “Yemen: Journalists under attack from all quarters, says Bachelet” (6 August 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=26152>, last accessed on 3 January 2022: “On 11 April [2020], the Specialized Criminal Court in Sana'a sentenced four journalists to death and six others to jail on charges of ‘publishing and writing news, statements, false and malicious rumors and propaganda with the intent to weaken the defense of the homeland, weaken the morale of the Yemeni people, sabotage public security, spread terror among people and harm the country’s interest’.”

⁴ See, e.g., UAE National Media Council Resolution No. 20 (2010), stating that all media, including audio, visual and print forms, must comply with the requirements of the UAE PPL.

⁵ See Library of Congress, “Egypt: Parliament Passes Amendments to Media and Press Law” (6 August 2018), <https://www.loc.gov/item/global-legal-monitor/2018-08-06/egypt-parliament-passes-amendments-to-media-and-press-law/#:~:text=Article%20Egypt%3A%20Parliament%20Passes%20Amendments,and%20the%20Supreme%20Media%20Council>, last accessed on 3 January 2022.

⁶ Al Yousef, “Controlling the Narrative: Censorship Laws in the Gulf”, The Arab Gulf States Institute in Washington (21 September 2020), <https://agsiw.org/controlling-the-narrative-press-and-publication-laws-in-the-gulf/>, last accessed on 12 January 2022.

⁷ Matt J. Duffy, “Arab Media Regulations: Identifying Restraints on Freedom of the Press in the Laws of Six Arabian Peninsula Countries”, 6 BERKELEY J. OF MIDDLE EASTERN & ISLAMIC LAW 1 (2014), at p. 7.

⁸ Matt J. Duffy, “Media laws and regulations of the GCC countries - Summary, analysis and recommendations” (2013), page 64, https://www.academia.edu/3385121/Media_Laws_and_Regulations_of_the_GCC_Countries, last accessed on 9 January 2022.

⁹ Duffy, supra note 7, at p. 19, citing to “Saudi Arabia: 600 Lashes, 7 Years for Activist”, HUMAN RIGHTS WATCH (Jul. 31, 2013), <http://www.hrw.org/news/2013/07/30/saudi-arabia-600-lashes-7-years-activist>, last accessed on 12 January 2022.

¹⁰ See, e.g., Isabel DeBre, “Prominent Kuwaiti poet detained on charges of insulting emir”, AP News (July 7, 2021), <https://apnews.com/article/kuwait-middle-east-a78c753a897cf8524f1de3715111d7f5>, last accessed on 12 January 2022. Similarly, in 2013, under the Lebanese Penal Code, a young social media activist was sentenced to two months in prison for insulting the Lebanese President. El Meouchi and Dib, “Media Law in Lebanon: An Overview”, Media Law International (2016), <https://www.medialawinternational.com/page148.html>, last accessed on 12 January 2022.

¹¹ The Tahrir Institute for Middle East Policy, “Press Freedom in Egypt” (24 May 2019), <https://timep.org/reports-briefings/timep-briefs/timep-brief-press-freedom-in-egypt/>, last accessed on 13 January 2022.

¹² Duffy, supra note 8, at 19.