



## ADDRESSING HATE SPEECH AND RACISM IN THE MEDIA IN THE SOUTHERN MEDITERRANEAN: A REVIEW OF FORMAL AND INFORMAL REGULATORY APPROACHES

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# EXECUTIVE SUMMARY

It is fair to say that countries in Southern Mediterranean region have witnessed an extraordinary degree of government influence over the media, which has only started to change in the last decade or so and especially in the post Arab Spring period.



In some countries in the region, new freedoms were won in the aftermath of revolutions. These political changes dramatically transformed the ability of the media in some countries to report and expose abuse of power by regimes, to challenge the status quo and to enable the public to engage in important public debates over their future. But these same tendencies make the media a target for those wishing to spread racist or discriminatory ideas and influence.

The many conflicts that remain in and around the region – which are almost all based on or contain an element of ethnic or religious divisions – also spur on this problem.

Studies suggest that hate and racist contents in the media is prevalent and growing. As a result, journalists often find themselves on the frontline of the battle for ideas and influence which has seen the most virulent forms of hate mongering. Indeed, journalists have in some cases become both the victims and the perpetrators of targeted incitement as opposing ideologies battle over the future.

An EU-supported debate held in Tunis in August 2017<sup>1</sup>, which examined ways to counter hate speech in the media, highlighted several alarming trends including the unethical reporting of migration; racism and religious extremism; the incitement to hate speech in live broadcasting to increase ratings and profits; the growing virulence of politicians' speech against opponents on

television and social media; and broadcasting by some satellite channels of programmes stirring hate and sectarian conflict in third countries and the prevalent lack of accountability.

Several countries have responded by increasing pressure on the media, cracking down on journalists or passing new legislation. This problem is seriously exacerbated by the massive increase in the use of social media and other digital platforms, where hate speech, often of a very extreme nature, thrives.

At the same time, there are efforts to address this. One is the 2013 UN-backed Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Rabat Plan of Action).<sup>2</sup> Among other things, this recommends that

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States adopt comprehensive anti-discrimination legislation as well as hate speech laws which are in line with relevant international law.

Another is a ground-breaking regional initiative to promote the establishment of a Special Mechanism for Media Freedom in the Arab World. Led by the International Federation of journalists (IFJ), its founding document, the Declaration on Media Freedom in the Arab World<sup>3</sup> has been formally adopted by authorities and media communities in six countries across the region.<sup>4</sup> It contains calls for States to ban hate speech in accordance with international standards and for the media to respect its “professional, ethical and social responsibility to combat hatred, intolerance and sectarianism”.<sup>5</sup>

This Report looks at media practices and regulatory tools that are available to address hate speech and racism in the media, with a focus on eight countries, namely Algeria, Egypt, Lebanon, Jordan, Morocco, Palestine and Tunisia.

The first part looks at regulatory approaches to addressing these problems. It, in turn, is broken down into two main sections, one looking at legal regimes, including systems of media regulation, and the second looking at self-regulatory practices in the media and how they deal with racist speech. The second part outlines international standards in this area and, based on these and the legal frameworks and experiences in the region, offers a set of recommendations for better practice directions in this area.

As such, the Report aims to provide useful inputs to law makers, media policy makers, owners, editors and journalists, as to what actions they should consider when tackling the problem of hate and racism spurred on through the media.

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<sup>1</sup> Press release at: <http://www.med-media.eu/event/medmedia-meeting-tunis-discusses-regional-report-wayscounter-hate-speech-media/>

<sup>2</sup> Available at: [http://www.un.org/en/preventgenocide/adviser/pdf/Rabat\\_draft\\_outcome.pdf](http://www.un.org/en/preventgenocide/adviser/pdf/Rabat_draft_outcome.pdf).

<sup>3</sup> Available at: <http://www.med-media.eu/library/declaration-media-freedom-arab-world/>.

<sup>4</sup> Available at: <http://www.ifj.org/nc/fr/news-single-view/backpid/1/article/mauritanie-les-syndicats-dejournalistes-menent-une-nouvelle-campagne-en-faveur-de-la-declaration/>

<sup>5</sup> See Principle 8: Hate Speech and Intolerance.

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## **PART I- REGULATORY APPROACHES TO ADDRESSING HATE SPEECH AND RACISM IN THE SOUTHERN MEDITERRANEAN**

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This part of the report focuses on different regulatory approaches to address hate speech and racism in the media. It is in two parts, with each part being organised along country lines. Section A focuses on legal rules and each country section is broken down into constitutional rules, penal rules and then laws which directly regulate the media, often divided into print and broadcast media. Practice across the region in the area is uneven, with some countries banning hate speech but others focuses more on blasphemy rules instead. Section B looks at self-regulatory efforts by media actors – whether as a sector (such as the print or broadcast media) or as individual media outlets – both to combat hate speech and to foster the power of the media to promote intercultural understanding.

### SECTION A: LEGAL RULES ADDRESSING HATE SPEECH AND RACISM

#### **Algeria**

##### *Constitutional Guarantees*

The Algerian Constitution does not include any explicit provision criminalising hate speech and intolerance in line with Article 20(2) of the *International Covenant on Civil and Political Rights*. Nevertheless, the Constitution provides that all citizens are equal before the law without any discrimination based on race, gender, opinion or any other personal or social condition.<sup>6</sup> The Constitution also stresses that different organisations must ensure that all citizens enjoy equal civil and political rights and have public obligations and duties without any distinction. In addition, organisations have a duty to remove obstacles for individuals which hinder the progress of the human being and prevent the effective participation of anyone in political, economic, social and cultural life.

##### *Penal Rules*

The Algerian Penal Code also does not include any explicit and clear rule prohibiting hate speech. However, it does include a prohibition on insulting Islam, and breach of this rule can lead to imprisonment of between three and five years and/or a fine of 50,000 to 100,000 Dinars (approximately USD 450 to 900). Insult is defined as offending the Prophet or any of the Islamic rituals, whether by writing, drawing, statements or any other means.<sup>7</sup>

Some 21 people were arrested in December 2016 on charges of inciting hate and violence and of establishing an assembly of evil. This came after the racially motivated incidents that took place in the Ghardaia region in Algeria between Arabs and Berbers<sup>8</sup>.

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<sup>6</sup> Article 29 of the Algerian Constitution: [http://confinder.richmond.edu/admin/docs/local\\_algeria.pdf](http://confinder.richmond.edu/admin/docs/local_algeria.pdf).

<sup>7</sup> Article 44 of the Algerian Penal Law. Available at: <http://www.joradp.dz/TRV/APenal.pdf>.

<sup>8</sup> For more information about the incidents, see: <http://www.alhayat.com/Articles/18959166/%D8%A7%D9%84%D8%AC%D8%B2%D8%A7%D8%A6>.

## *Media Legislation*

The media law<sup>9</sup> confirms that the media should be free within the framework established by law, while respecting the pluralistic nature of ideas and opinions.<sup>10</sup>

The law does not include any explicit reference to the prohibition of hatred but it does call on journalists to refrain from directly or indirectly paying tribute to racism, intolerance or violence.<sup>11</sup> The law also provides for the Supreme Council for the Arts and the Ethics of Journalism to impose sanctions on journalists for violations of the rules of etiquette and ethics of the profession of journalism.<sup>12</sup>

## *Audio-Visual Law<sup>13</sup>*

Article 47 of the Audio-Visual Law sets out general conditions and rules for the operation of a television or radio broadcast service. Article 84 of the same law defines some of the conditions mentioned in the previous article, including impartiality and objectivity, refraining from promoting self-interest groups, whether political, ethnic, economic, financial, religious or ideological, and refraining from encouraging violence or incitement to racial discrimination, terrorism or violence against a person based on his origin, gender, race or belonging to a certain religion. Broadcasters must also respect religious authorities, not insult other religions, and respect multi-party politics and intellectual currents and views in their programmes<sup>14</sup>.

The Journalism Ethics Charter calls on journalists to refrain from promoting any form of violence, terrorism, crime, intolerance, racism or gender discrimination.<sup>15</sup> Media legislation itself does not use the term “hatred” explicitly, but instead relies on some related terms, such as racism and incitement to discrimination. The Charter uses broad terms which can be subject to wide interpretation that may result in the imposition of undue restrictions on freedom of the media.

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<sup>9</sup> Available at: TRV/AInfo.pdf.

<sup>10</sup> Article 2 of the Media Law. Available at: dz/TRV/AInfo.pdf.

<sup>11</sup> Article 92 of the Media Law, Second Chapter, Journalism Profession: Ethics and Etiquette. Available at: dz/TRV/AInfo.pdf.

<sup>12</sup> Article 92 of the Media Law, Second Chapter, Journalism Profession: Ethics and Etiquette. Available at: TRV/AInfo.pdf.

<sup>13</sup> Audio-visual law no. 14-04, 24 Feb 2004. Available at: <http://www.ministerecommunication.gov.dz/ar/node/458>.

<sup>14</sup> Article 48 of the Audio-Visual Law.

<sup>15</sup> Article 72 of the Algerian Journalism Ethics Charter. Available at: <http://www.med-media.eu/wp-content/uploads/2014/07/%D9%85%D9%8A%D8%AB%D8%A7%D9%82-pdf>.

## Egypt

### *Constitutional Guarantees*

The 2014 Egyptian Constitution<sup>16</sup> states, under the heading “Public freedoms and rights”, specifically in Article 53, that discrimination and incitement of hatred shall be treated as crimes under the law. The same article also stipulates that the State is obliged to take the necessary measures to eliminate all forms of discrimination, while the Constitution also calls for the creation of an independent Commission for this purpose.

Article 71 of the Constitution prohibits prior censorship of the media except in times of war, and also rules out deprivations of liberty for crimes committed through publications. Nevertheless, incitement to violence or discrimination among citizens, or statements that harm others’ reputations, shall be punishable by law.

### *Penal Rules*

There is no clear and unambiguous reference to the term hatred in the Egyptian Penal Code,<sup>17</sup> unlike in the Egyptian Constitution. Nevertheless, Article 176 of the Penal Code makes it a crime, punishable by imprisonment, for anyone to incite to discrimination on the basis of gender, origin, language, religion or creed, if this is done with the aim of disturbing the peace. This latter is a very general notion which could be interpreted broadly. Also, what is being protected here is the peace and not the assaulted group.

The Penal Code also makes it a crime to exploit religion by promoting or favouring, orally, in writing or in any other way, extremist ideas with the aim of provoking sedition, contempt or disdain of a religion or sect, or of harming national unity and social peace.<sup>18</sup> Once again it may be noted that the terms used are vague and flexible, which fails to conform to standards regarding criminal legislative drafting, and which has resulted in a number of arrests and prosecutions. An example was the arrest of Egyptian journalist Mahmoud Hussein on 20 December 2016, who was charged with spreading sedition and incitement against the institutions of the State.<sup>19</sup>

Another journalist, Mutaz Matar, was prosecuted and charged with a number of different offences including incitement against public figures and spreading rumours and lies in order to stir up sedition within Egyptian society.<sup>20</sup>

The Egyptian public prosecutor also charged a person who issued a threat against Christians with stirring up sectarian strife and disturbing public security. He had written “Christians will die” on the floor of a church in the Egyptian city of Damietta<sup>21</sup>.

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<sup>16</sup> 2014 Egyptian Constitution. Available at: <http://www.parliament.gov.eg/home/destour.aspx>.

<sup>17</sup> Egyptian Penal Code and its amendments of 1937.

<sup>18</sup> Article 98(w) of the Egyptian Penal Code.

<sup>19</sup> Mahmoud Hussien, an Egyptian Journalist working with Al-Jazeera News Channel. See: <http://www.hespress.com/international/333353.html>.

<sup>20</sup> Mutaz Matar hosts the With Mutaz TV show on Al-Sharq Channel. The prosecution took place in 2016.



### *Criminal Law on Discrimination between Citizens*

A special law was passed to criminalise discriminating against citizens on 15 October 2011. The Law includes an article that prohibits anyone from promoting discrimination between individuals or against groups based on race, origin, language or creed. In addition, it provides for heavier penalties where the act was committed by a public figure<sup>22</sup>.

The Law is a new tool in the battle against the growth of hatred and discrimination based on gender, origin, language or creed, but it only applies to discrimination among citizens, which means that it does not apply to other individuals residing in Egypt. Furthermore, the Law uses broad and flexible terms and does not specify clearly the exact scope of what is prohibited, so that individuals might adjust their behaviour accordingly.

### *Press and Media Legislation*

As for media laws, the Press Law<sup>23</sup> stipulates that journalists should not publish content that abuses religions, calls for hate, challenges the faith of others or promotes bias against or contempt for any sect or religion.

Violation of this rule can be punished with imprisonment for up to one year and/or a fine of between five and ten thousand Egyptian pounds (approximately USD 320 to 635).<sup>24</sup>

## **Jordan**

### *Constitutional Guarantees*

In September 2011, the Jordanian Constitution was amended to include new guarantees to promote and protect human rights.<sup>25</sup> Nevertheless, the amendments did not include any specific provisions prohibiting hate, intolerance or discrimination. As a result, the Jordanian legal system lacks constitutional rules on hate speech in line with Article 20(2) of the *International Covenant on Civil and Political Rights*.

However, Article 6 of the Jordanian Constitution provides that all Jordanians are equal before the law in terms of rights and duties, without discrimination on grounds of race, language or religion.<sup>26</sup> The Article also provides that maintaining social peace is a sacred duty of every Jordanian.<sup>27</sup> However,

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<sup>21</sup> The trial began in January 2017. For more information on this see “the seventh day” website, under the title “the prosecution charged with stirring sectarian strife writer is a threat to the Church of Damietta”. Available at: [story/2017/1/3/%D8%A7%D9](http://story/2017/1/3/%D8%A7%D9).

<sup>22</sup> The penalty for breach according to the law is imprisonment of three months and/or a fine of between 50 and 100,000 Egyptian pounds. The law provides for a harsher penalty in the case that the crime was done by a public sector employee or someone in an official position.

<sup>23</sup> Article 20 of the Press Law, no. 96 of 1996.

<sup>24</sup> Article 22 of the Press Law.

<sup>25</sup> Note that the Jordanian Constitution was amended twice after 2011, first in 2014 and then in 2016.

<sup>26</sup> The Jordanian Constitution, published in the Official Gazette no. 1093, 8 January 1952.

<sup>27</sup> Article 6(2) of the 1952 Jordanian Constitution.

these provisions only refer to Jordanian citizens, leaving out the many other people living in the Hashemite Kingdom.

### *Penal Rules*

The Jordanian Penal Code<sup>28</sup> also does not refer explicitly to “hate speech”, although it does refer to some related terms. A key provision is Article 150, which comes under the title of “crimes that undermine national unity or disturb the serenity of the nation”. Article 150 penalises any writing, speech or action that is intended to or results in inciting sectarian strife or racism or conflict between sects and various groups living in the country. Breach of this rule may lead to imprisonment for between six months and three years and a fine of up to fifty Jordanian Dinars (approximately USD 70).

Article 151 of the Penal Code also makes it a crime for any person to belong to an association which was established for any of the purposes referred to in Article 150. The Penal Code includes other provisions that criminalise any statement that would exacerbate racial or sectarian tensions in wartime.<sup>29</sup>

Article 150 of the Penal Code covers some of the same ground as Article 20(2) of the *International Covenant on Civil and Political Rights* in terms of the ideas of inciting sectarian strife or racism or conflict between sects and different groups. Nevertheless, it does not provide for exactly the same rule as is found in Article 20(2) in terms of prohibiting advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

The terms used in this article are relatively flexible and broadly defined. In this respect, they fail to conform to criminal legislative drafting standards, which calls for precise terms, so that individuals can adjust their behaviour accordingly. This may lead to the imposition of unjustified restrictions on freedom of expression or opinion.

Prominent journalist Nahed Hatter<sup>30</sup> had been charged under this article, after posting a cartoon on Facebook in August 2016. The caricature, entitled The God of Daesh, depicted an ISIS militant lying in bed with two women and asking God to serve him a drink. Hatter was subsequently arrested and charged with inciting sectarian strife and insulting Islam (Articles 150 and 278(1) of the Penal Code).

Released on bail in early September, he was shot dead on the 25<sup>th</sup> as he arrived at court for a hearing. The killing sparked a public outcry in the country and far-beyond. The Jordanian government condemned the assassination and, in its aftermath, detained a number of social media users spreading hate speech.<sup>31</sup>

The day after the killing, the government issued a gag order preventing any further publication relating to the event in order to preserve the secrecy of the investigation.<sup>32</sup> The authorities have,

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<sup>28</sup> Jordanian Penal Code, no. 16 of 1960.

<sup>29</sup> Article 131 of the 1960 Jordanian Penal Code.

<sup>30</sup> Nahed Al Hatter, a Jordanian journalist, was assassinated after sharing a post on his Facebook, which some people saw as an abuse of the divine.

<sup>31</sup> Rana Hussein, “Social media users to be sued over hate speech in reaction to Hattar shooting”, *Jordan Times*, 25 September 2016. Available at: <http://bit.ly/2qSkhez>.

<sup>32</sup> See: [https://en.wikipedia.org/wiki/Nahed\\_Hattar#cite\\_note-20](https://en.wikipedia.org/wiki/Nahed_Hattar#cite_note-20).

however, been accused of failing to respect freedom of expression by charging Hattar in the first place, and by failing to protect him. The blasphemy case gave rise to a heated debate regarding freedom of expression and hate speech in the country.

In another example, Ayman Otoum was charged with inciting sectarian strife or racism in his novel "Soldiers Talk", contrary to the provisions of Article 150 of the Penal Code. Otoum was sentenced to pay a fine of five thousand JDs (approximately USD 7,060) and the judgment is currently on appeal.

Finally, 12 people were charged under Article 150 for comments and posts they made on different social media networks, which included abuses directed at the victims of the Istanbul Restaurant Attack of 1 January 2017.<sup>33</sup>

### *Media Legislation*

Media legislation in Jordan requires journalists to refrain from publishing anything that might incite violence or provoke discord among citizens in any way. This rule is found in Article 7(d) of the Press and Publication Law.<sup>34</sup> The same Law also prohibits content which would constitute an insult to religious belief, including where this incites sectarian strife or racism.<sup>35</sup>

In the field of broadcasting, the Audiovisual Media Law prohibits licensed broadcasters from broadcasting hateful, terrorist, violent or seditious material or from promoting religious, sectarian or ethnic strife.<sup>36</sup>

The instructions on programmes, commercials and advertising states that programmes and advertisements should not include any material that insults or is biased against anyone and should not call for distinctions on the basis of gender, religion, race, language, or physical or mental disability.<sup>37</sup>

The Jordanian Journalist's Code of Honour, adopted under the Jordan Press Association Law, points to the need for journalists to respect religions and to avoid inciting racism or sectarianism.<sup>38</sup> It also stresses the need to avoid harmful and abusive references to a person's race, colour, religion, gender or ethnic origin or any physical or mental illness or disability.<sup>39</sup> It also states that the press should avoid calling for discrimination or exploitation against women, including due to their race or social standing.<sup>40</sup>

In an analogous fashion, the Law on Access to Information includes Article 10, which prohibits the requesting of information that would promote religious, racial or ethnic discrimination based on race or colour.<sup>41</sup>

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<sup>33</sup> *Al Ghad* newspaper. Available at: <http://www.alghad.com/articles/1354862D>.

<sup>34</sup> Press and Publication Law no. 8 of 1998, as amended.

<sup>35</sup> Article 38(a)-(c) of the Press and Publication law.

<sup>36</sup> See Article 20(1)(2) of the Audio-Visual Media Law, no. 26 of 2015.

<sup>37</sup> Articles 3(6) and 6(9) of the programme regulations based on the Audio-Visual Law.

<sup>38</sup> Article 4 of the Jordanian Code of Honour.

<sup>39</sup> Article 5 of the Jordanian Code of Honour.

<sup>40</sup> Article 13 of the Jordanian Code of Honour.

<sup>41</sup> The Access to Information Law, no. 47 of 2007.

The Code of Ethics for workers in the audiovisual media sector in Jordan also calls on media outlets and journalists to be careful not to be associated with defamation or incitement of violence and hatred against any person or institution on the basis of gender, race, or religious or political affiliation.<sup>42</sup>

These media laws and codes of honour use the word “hate” explicitly in some cases, although in many cases the terms used are broad and general and are susceptible of being interpreted in different ways. These rules fail to create a clear and precise legal boundary between what is deemed to be a legitimate expression of opinion and what is deemed to be hate speech. This can lead to these texts being interpreted in a way that imposes unjustified restrictions on freedom of expression and freedom of the media.

## **Lebanon**

### *Constitutional Guarantees*

The Lebanese Constitution<sup>43</sup> does not include any explicit provisions criminalising hate speech. However, Article 7 provides that all Lebanese citizens are equal before the law, and that they enjoy civil and political rights and have public obligations and duties without any distinction. Article 4 stipulates that freedom of belief is absolute, while Article 5 protects freedom of education unless it violates public order and morals, or attacks the dignity of any religion or sect.

### *Penal Rules*

Article 317<sup>44</sup> of the Lebanese Penal Code criminalises acts, writings and speeches that are intended to or actually result in incitement to sectarian or racial tension or provoke conflict between sects and different groups in the country. The punishment for this crime is imprisonment of between one and three years and a fine of between one and eight hundred thousand Lebanese pounds (approximately USD 65 to 530). The court may also limit the rights set out in Articles 65(2) and (4), in addition to ordering publication of the judgment.

Article 318 of the Penal Code also makes it a crime for any person to belong to an association established to further the purposes referred to in Article 317. In addition, Article 295 prohibits any person, during wartime or when a war is expected, from publishing propaganda that aims to weaken national sentiment or awaken racial or sectarian divisions.

The Lebanese Penal Code does not clearly and explicitly criminalise hate speech and fails to include clear prohibitions which allow individuals to adjust their behaviour accordingly and which are in line with international standards. Article 317 does cover some aspects of hate speech, such as racism and inciting sectarian strife, but also allows for wide judicial interpretations.

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<sup>42</sup> Article 22(3) of the Jordanian Audio-Visual Ethics Charter. Available at: <http://www.mc.gov.jo/Pages/viewpage.aspx?pageID=22>.

<sup>43</sup> Lebanese Constitution, 24 May 1962. Available at: <https://www.lp.gov.lb/CustomPage.aspx?id=26&masterId=1>.

<sup>44</sup> Lebanese Penal Code, 1 March 1943. Available at: <http://www.madcour.com/LawsDocuments/LDOC-1-634454580357137050.pdf>.

Several people have been charged under these rules. One example is the journalist Muhannad Al Haj, who was summoned by the Anti-Cybercrime Office regarding an investigation of him for slander and incitement.<sup>45</sup> In addition, a request has been made to the Public Prosecution Office to prosecute Lebanese director Charbel Khalil, due to one of his tweets on Twitter, which some considered to constitute encouragement of sectarian and religious strife.<sup>46</sup>

### *Media Legislation*

The relevant rules in the media laws that govern journalism and the media are comparable to those found in the Lebanese Penal Code. The Press Law does not use the term hatred but instead prohibits inciting sectarian strife or racism.

Article 25 of the Press Law stipulates that if a publication denigrates one of the recognised religions in the country or includes material that would stir up sectarian and racial strife, disturb the public peace or endanger the security of the State, its sovereignty, its unity or its borders, the Prosecutor may confiscate the print run and refer the matter to the competent court. If the court finds a breach of the rules, it may order imprisonment of between one and three years and/or a fine of 50 to 100 million Lebanese Pounds (approximately USD 33,000 to 66,000).<sup>47</sup>

The Lebanese Broadcast Law requires broadcasters to submit, with their licence applications, a set of documents, including a statement committing the organisation to comply with the applicable laws, regulations and the terms of the licence and a pledge not to broadcast programmes that provoke sectarian strife, or criticism or defamation of religious beliefs (see Article 3(4)(d)).<sup>48</sup>

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<sup>45</sup> The published report is available at :<http://www.dc4mf.org/ar/content/7006>.

<sup>46</sup> For more information, see :<http://www.alquds.co.uk/?p=298410>.

<sup>47</sup> Article 25 of the Publication Law, 14 September 1962. Available at: <http://www.ministryinfo.gov.lb/main/MediaLaws/ActNo.382.aspx>.

<sup>48</sup> Article 3(4)(d) of the Broadcasting Law, no. 531 of 1996. Available at: <http://www.ministryinfo.gov.lb/main/MediaLaws/Satellitebroadcastinglaws.aspx>.

## Morocco

### *Constitutional Guarantees*

The 2011 Moroccan Constitution explicitly and directly prohibits incitement to racial hatred or violence.<sup>49</sup> The Constitution states that the law shall define the rules regulating the media so as to protect media freedom while respecting the linguistic, cultural and political pluralism of the Moroccan society.<sup>50</sup> The Constitution also stresses that the State shall promote the principle of equality between men and women and calls for the creation of a body to promote equality and to combat all forms of discrimination.<sup>51</sup>

### *Penal Rules*

The Moroccan Penal Code does not explicitly use the term hatred, unlike the Moroccan Constitution. Nevertheless, it includes a definition of discrimination in Article 431(1), which is based on distinctions between people based on national origin, social origin, colour, gender, family status, health status, disability, political opinion or trade union membership. It also includes the idea of discrimination based on an incorrect allegation of affiliation to a race, nation, ethnicity or particular religion.<sup>52</sup>

The Penal Code punishes anyone who practises discrimination as defined above, with imprisonment of between one month and two years and a fine of twelve hundred to fifty thousand Dirhams (approximately USD 120 to 4.940). For this purpose, it is discriminatory to undertake the following based on the prohibited grounds mentioned above:

1. Refuse to provide a service;
2. Obstruct routine practise of an economic activity; or
3. Refuse to hire someone or fire someone from their position.

These rules do not really represent criminalisation of hate speech, but only relate to some of the aspects of this type of speech.

### *Press and Media Legislation*

The Moroccan Press and Publications Law is in line with the Moroccan Constitution and the *International Covenant on Civil and Political Rights* in terms of directly prohibiting incitement to hatred and discrimination. Article 71 of the Law punishes any publication, periodical or electronic newspaper which abuses Islam or which incites to discrimination or hatred among people.<sup>53</sup>

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<sup>49</sup> Article 23 of the Moroccan Constitution. Available at: [http://adala.justice.gov.ma/AR/Legislation/textesjuridiques\\_constitution.aspx](http://adala.justice.gov.ma/AR/Legislation/textesjuridiques_constitution.aspx).

<sup>50</sup> Article 28 of the Moroccan Constitution.

<sup>51</sup> Article 19 of the Moroccan Constitution.

<sup>52</sup> Article 431(1) of the Moroccan Penal Law, adopted 19 September 2016. Available at: <http://www.wipo.int/edocs/lexdocs/laws/ar/ma/ma045ar.pdf>.

<sup>53</sup> Third part, penalties, first branch, protecting the public, Article 71 of the Moroccan Press and Publication Law, Official Gazette, edition 6491, 15 August 2016. Available at: [http://adala.justice.gov.ma/AR/Legislation/textesjuridiques\\_libertes.aspx](http://adala.justice.gov.ma/AR/Legislation/textesjuridiques_libertes.aspx).

Article 72 of the same law also provides for a fine for anyone who incites directly to hatred or discrimination, or who praises war crimes, crimes against humanity, genocide or terrorism crimes, where these acts were committed using one of the communication media referred to above.<sup>54</sup>

### *Broadcasting*

Broadcasters are regulated by the Haute Autorité de la communication audiovisuelle (HACA), a special body empowered to regulate broadcasting,<sup>55</sup> and the Audio-visual Communication Law,<sup>56</sup> which establishes the rules for the broadcasting sector. Article 9 of the latter states that programmes should not broadcast or re-broadcast content that incite to violence, racial discrimination, terrorism or violence against a person or group of people based on their origin, or their belonging or not belonging to a ethnic group, nation, race or particular religion. The primary mission of HACA is to ensure respect for the principles of pluralism, diversity and freedom of expression in the audiovisual communication sector. Recent reforms body have made it possible for citizens to present complaints about offensive media content<sup>57</sup>.

## **Palestine**

### *Constitutional Guarantees*

The Palestinian Basic Law of 2003, as amended, does not refer to the idea of hatred or incitement to it, and thus fails to meet the standards of Article 20(2) of the *International Covenant on Civil and Political Rights*. The Constitution does, however, stress that human rights and fundamental liberties are binding and must be respected.<sup>58</sup> It also stipulates that everyone has the right to express and propagate their opinions, taking into account the provisions of the law.<sup>59</sup>

### *Penal Rules*

The Jordanian Penal Code no. 16 of 1960 is applied in the West Bank and, as noted above, Article 150 of this law criminalises any type of speech or action which is intended to or which in fact results in incitement to sectarianism or which provokes conflict between sects and various groups.<sup>60</sup> The Penal Code also makes it a crime to create organisations to pursue the above-mentioned purposes.<sup>61</sup>

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<sup>54</sup> Article 72 of the Press and Publication Law.

<sup>55</sup> Created by Dahir No. 1-02-212 of 31 August 2002 portant creation de la Haute Autorité de la communication audiovisuelle, as amended (HACA Law).

<sup>56</sup> Dahir No 1-040257 of 7 January 2005 portant promulgation de la loi No. 77-03 relative à la communication audiovisuelle (related to Audio-Visual Communication). Available at: [http://mincom.gov.ma/landing/demo/template/wordpress/media/k2/attachments/Loi0377ComAudioVis\\_AR.pdf](http://mincom.gov.ma/landing/demo/template/wordpress/media/k2/attachments/Loi0377ComAudioVis_AR.pdf).

<sup>57</sup> Law 66-16 modifying law n° 77-03 on audiovisual communication audiovisuelle and n°66-06 reorganising the HACA.

<sup>58</sup> Article 10 of the Palestinian Basic Law of 2003. Available at: <http://muqtafi.birzeit.edu/Legislation/LegCard.aspx?id=14138>.

<sup>59</sup> Article 19 of the Palestinian Basic Law of 2003.

<sup>60</sup> Article 150 of the Palestinian Penal Code, the punishment shall be imprisonment from six months to three years and a fine not exceeding fifty dinars. Published at Al-muqtafi Website, Palestinian Legal and Judicial System: <http://muqtafi.birzeit.edu/Legislation/GetLegConsFT.aspx?lnk=2&LegPath=6581>.

<sup>61</sup> According to Article 151 of the Palestinian Penal Code, the punishment for this article is the same as for breach of Article 150.

The same law also makes it a crime for anyone to publish propaganda, at a time of war or when a war is expected, with aims to weaken national sentiment or to awaken racial or sectarian tensions<sup>62</sup>. It also makes it a criminal offence for anyone to intentionally harass a person or a crowd of people who are gathered legally to practise their religious rituals. Furthermore, it is an offence to scorn a religious ritual, disrupt a religious event or assault anyone at such an event, whether they are actively practising their religion or just attending the event, unless these acts are done while having a justification or excuse.<sup>63</sup>

A number of Palestinians in the West Bank have been arrested and prosecuted under Article 150. One example is the Palestinian journalist George Kanawati, the Director of Bethlehem 2000 Radio. Another person who was charged is Yazeed Khader, Director of *A Platform of Reform* newspaper. Several other activists, politicians and young people have been charged with provoking sectarian strife or sectarianism.<sup>64</sup>

#### *Presidential Decree on the Consecration of National Unity and Prevention of Incitement*

Presidential Decree No. 3 on the consecration of national unity and the prevention of incitement was issued in 1998.<sup>65</sup> It prohibits, in the first article, the acts of incitement to discrimination, encouraging violence, directing insults at different religions and inciting violence that harms relations with other countries. In addition, the Decree makes it illegal to form organisations that practise or incite crimes.

As with the Penal Code, the Presidential Decree uses vague and broad terms, rather than referring explicitly to “hatred”. Furthermore, the justification for issuing such a Decree is unclear, given the existence of valid laws criminalising similar acts, in particular the Penal Code.

#### *Press and Publications Law*

Article 8(d) of the Palestinian Press and Publications Law<sup>66</sup> states, under the title “the duties and ethics of the press”, that it is incumbent on everyone who works in the press, in accordance with ethical standards, to refrain from publishing anything that might fuel violence, intolerance or hatred, or to issue calls for racism and sectarianism.

Article 37 of the Law contains a long list of prohibitions on what newspapers may publish. Among other things, it bans the publication of articles which would offend against national unity, incite others to commit crimes or sow hatred and discord among members of society.

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<sup>62</sup> Article 130 of the Penal Code, for which the punishment for breach is temporary hard labour.

<sup>63</sup> Article 276 of the Palestinian Penal Code, for which the punishment is imprisonment for up to three years or a fine not exceeding twenty dinars.

<sup>64</sup> Palestine Online Website. “‘Inciting’ ... a charge prosecuting dozens in the West Bank”, published on 10 March 2014. Available at: <http://www.felesteen.ps/details/news/111800/%D8%A5%D8%AB%D8%A7%D8%B1%D8%A9-l>.

<sup>65</sup> Presidential Decree No. 3 of 1998 regarding national unity and the prevention of incitement. Published in issue 26 of the Palestinian Official Gazette on 26 November 1998. Published at Al-muqtafi Website, Palestinian Legal and Judicial System: <http://muqtafi.birzeit.edu/Legislation/GetLegConsFT.aspx?LegPath=12679>.

<sup>66</sup> Palestinian Press and Publications Law, no. 9 of 1995. Published in ed. 6 of the Official Gazette on 29 August 1995. Available at: <http://muqtafi.birzeit.edu/Legislation/GetLegConsFT.aspx?LegPath=12208>.



According to Article 47 of the Palestinian Press and Publications Law, for violations of Article 37, the competent authority for making an administrative decision has the right to order the seizure and confiscation of all of the copies of a newspaper published on a given day. The court may also order the suspension of a newspaper for a period of up to three months for such violations, in addition to any other punishment.

Although the Press and Publications Law does refer explicitly to “hatred,” it still employs a number of rather flexible terms. This creates the possibility of unjustified interpretations of the rules which might unduly limit the freedom to publish articles and freedom of the press in general.

### *Audio-Visual Media*

An Audiovisual Media law was drafted for Palestine but it has still not been passed, in part due to the suspension of the work of the Palestinian Legislative Council since 2006. The 2016 draft of the Audiovisual Law states in Article 22(a) that licensed broadcasters shall not broadcast hateful, terrorist, violent or seditious material, or promote religious, sectarian or ethnic strife or discrimination. Article 38 provides for penalties for breach of this article of a fine of between JD two and ten thousand (approximately USD 2,825 and 14,120).

Article 33 of the same draft states that the Media Complaints’ Commission shall be the specialised body for dealing with complaints relating to promoting violence and discrimination based on religion, race, colour, gender, or ethnic or social origin.

As with the Palestinian Press and Publications Law, the draft Audio-Visual Law uses vague, flexible language, which allows for wide interpretation by judicial and other authorities.

## **Tunisia**

### *Constitutional Guarantees*

The Tunisian Constitution states clearly and directly that the State is committed to preventing accusations that someone is a non-believer, and incitement to hatred or violence. The State is also committed to spreading the values of equality and tolerance and at the same time to protect holy sites in all ways possible.<sup>67</sup> The Constitution also pledges the State’s support for the national culture, including tolerance and rejection of violence, openness to different cultures and the promotion of dialogue among civilisations.<sup>68</sup>

The Tunisian Constitution uses clear and explicit terms to protect the rights and freedoms it guarantees, which are not open to widely varying interpretations. Such explicit rules are important for all civil democratic states, in order to protect the rights of others and to meet the requirements of public security, national defence, health and morals, while respecting proportionality between rights and obligations.<sup>69</sup> These restrictions comply fully with the provisions of Article 19(3) of the *International Covenant on Civil and Political Rights*.

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<sup>67</sup> Article 20 of the Press Law.

<sup>68</sup> Article 22 of the Press Law.

<sup>69</sup> Article 49 of the 2014 Algerian Constitution.

### *Penal Rules*

According to Article 14(8) of the Tunisian Anti-Terrorism and the Prevention of Money Laundering Act, it is a crime for anyone to accuse someone else of not being a believer or to promote hatred between races, religions or creeds.<sup>70</sup> The penalty for this, according to the Tunisian Penal Code, is imprisonment of between one to five years and a fine of five to ten thousand Dinars (approximately USD 2,180 to 4,355).<sup>71</sup> The penalty increases to up to twenty years' imprisonment and a fine of one hundred thousand Dinars (approximately USD 43,550) if the acts lead to physical damage as defined in Article 2 of the Anti-Terrorism and Prevention of Money Laundering Act.

It is thus clear that Tunisian legislators follow a tough line when it comes to incitement to hate, which is even considered to be a terrorist crime. However, it could be considered to be excessive to treat this sort of criminal act as a terrorist crime.

In this context it should be noted that a representative of Tunisia's Jews filed a complaint to the General Attorney against the Salafi Sheikh accusing him of making racist statements to young people on 29 March 2012 which incited them to hatred and called on them to murder Jews. This complaint resulted from Al-Sheikh's invitation, during a demonstration organised by Islamists, to young people to train in order to fight the Jews.<sup>72</sup>

In another case, the Court of First Instance in Kaf, on 28 January 2014, sentenced the Imam of Sidi Ali Bin Saleh to six months' imprisonment for incitement to hatred against State security in various speeches.<sup>73</sup>

### *Basic Law on Elections*<sup>74</sup>

Article 52 of the Basic Law on Elections includes a set of principles governing election campaigns, including not to call for hate, violence, intolerance and discrimination. In addition, Article 56 of the same Law prohibits any electoral propaganda that includes a call to hatred, violence, intolerance or discrimination. In accordance with Article 195 of the Law, the punishment for violation of these rules is imprisonment for between 6 months and one year.

A court in Sousse issued a decision on 13 March 2015 refusing to hear charges of inciting hate and violence during the presidential elections against Abdul Rahman bin Sokir. He had written "Stop blowing in the dead bodies" on a poster referring to one of the candidates.<sup>75</sup>

### *Press and Media Legislation*

The Press and Publications Law provides for imprisonment of up to three years and a fine of one to two thousand Dinars (approximately USD 435 to 870) for anyone who calls directly, using the different

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<sup>70</sup> Article 14(8) of the Anti-Terrorism and Money Laundering Law, no. 26 of 2017. Available at: [ents/Loi\\_2015\\_26\\_fr.pdf](#).

<sup>71</sup> Article 14 of the Anti-Terrorism and Money Laundering Law.

<sup>72</sup> Available at: <http://www.dw.com/ar/%D9%8A%D9%87%D9%88%D8%AF-%>.

<sup>73</sup> Available at: <http://www.alchourouk.com/36077/566/1/%D8%A7%D9%84%D9%83%D8%A7%D9%81:-6->.

<sup>74</sup> Basic Law, no. 16 of 2014, adopted 26 May 2014, relating to elections. Official Gazette of the Republic of Tunisia, 27 May 2014, edition 42, p. 1398.

<sup>75</sup> Available at: <http://www.zoomtunisia.tn/article/10/28982.html>.

means set forth in Article 50, which includes various public forms of communication, for hatred between races, religions or ethnic groups, incitement to discrimination, the use of aggressive means, or dissemination of ideas based on racial discrimination<sup>76</sup>.

This Article overlaps with Article 20(2) of the *International Covenant on Civil and Political Rights* in terms of prohibiting hate speech. However, it also poses a risk to freedom of the media since it uses flexible terms which may be used to impose unjustifiable restrictions on freedom of the press.

The Decree on the Freedom of Audiovisual Communication<sup>77</sup> states that freedom of broadcasting is guaranteed in accordance with international conventions and treaties ratified by the Republic of Tunisia.<sup>78</sup> It provides for the exercise of the rights and freedoms set forth in the Decree, particularly in the third and fourth articles, again on the basis of respect for international conventions on human rights and freedom of expression, equality and pluralism of ideas and opinions. It also provides that the exercise of these rights and freedoms must comply with regulations designed to ensure respect for human dignity and freedom of belief, and the protection of national security and public order<sup>79</sup>.

The Decree creates an Independent High Authority for Audiovisual Communication, which must regulate broadcasting according to a set of principles. The Authority is tasked with fostering a broadcasting sector which is diverse and balanced, which enshrines values of freedom and justice, and which rejects discrimination on the basis of origin, gender or religion.<sup>80</sup>

At the same time, the Decree does not include any direct prohibitions on incitement to hatred.

In addition, the Tunisian Journalists' Charter of Honour<sup>81</sup> lacks provisions calling on journalists to avoid hate speech and incitement.

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<sup>76</sup> Article 52 of Decree no. 115 of 2011, 2 November 2011, which is related to freedom of journalism, printing and publishing. Official Gazette of the Republic of Tunisia, 4 November 2011, edition 84, p. 2568.

<sup>77</sup> Decree no. 116 of 2 November 2011 on Audio-Visual Freedom. Available at:

<http://www.haica.tn/%d8%b9%d9%86-%d8%a7%d9%84%d9%87%d9%8a%d8%a6%d8%a9/%d9%85%d8%b1%d8%a7%d8%ac%d8%a7>

<sup>78</sup> Article 3 of the Audio-Visual Decree.

<sup>79</sup> Article 5 of the Audio-Visual Decree.

<sup>80</sup> Article 150 of the Audio-Visual Decree.

<sup>81</sup> Available at:

<http://www.snjt.org/%d9%85%d9%8a%d8%ab%d8%a7%d9%82-%d8%a7%d9%84%d8%b4%d8%b1%d9%81-2/>

## SECTION B: SELF-REGULATION BY THE MEDIA TO ADDRESS HATE SPEECH AND RACISM

### **Introduction**

This part of the Report looks at self-regulatory initiatives and the way this helps to combat hate speech and racism in the media in the eight countries in the Southern Mediterranean covered by this report, namely Algeria, Egypt, Lebanon, Jordan, Morocco, Palestine and Tunisia. Media in these countries need self-regulation, among other things because of the problems that emerged after the Arab Spring in 2011, which prompted an escalation in the level of hate speech and incitement to racism.

When we refer to self-regulation in this Report, we mean policies, measures and systems put in place by an individual media outlet or a media sector itself, whether the public or private media, which seek to raise professional standards. These systems are normally characterised by a set of standards contained in a code of conduct, policy statement or guidelines, and a complaints body, such as an ethics committee or media ombudsman.

The core idea behind self-regulation is that the media establishes its own professional and ethical rules and controls, through voluntary action. Indeed, the essence of self-regulation is that it is voluntary in nature, so that non-compliance with the rules does not entail legal liability. This also means that the media as a sector (or an individual media outlet) organises itself rather than having external organisations do so, so that it monitors its own mistakes and professional lapses. This is an important way of protecting the independence of the media, since monitoring by an external body might engage political or other sorts of power, which should not influence the media.

A number of codes of conduct, charters of honour and ethics committees exist in the Arab World, but they are largely paper tigers and a need still exists for these initiatives to be applied and enforced more effectively in practice. Part of the problem is that complaints councils are almost entirely absent in the countries covered by this report, so that the systems do not give those who feel they have been harmed by media behaviour an opportunity to make a complaint about this.

This section is based largely on news reports disseminated through the media. The collection of information for this purpose was complicated by the fact that the media seldom address the types of professional issues addressed in this report.

### **Algeria**

The Ethics and Deontology Charter adopted by Algerian Journalists and published in April 2000 was the first such document based on the 1990 Information Code which laid down the duties and rights of the media. A subsequently established Supreme Council for Ethics, whose board included media representatives elected by their peers, is responsible for implementation.

The Charter calls on journalists to abstain from praising violence, terrorism, crime, fanaticism, racism, sexism and intolerance, in any form whatever, and to avoid plagiarism, slander, defamation and unfounded accusations. It also calls on media to distinguish between news and opinions.<sup>82</sup>

In practice, however, an inactive Supreme Council for Ethics and the lack of other accountability mechanisms in the media meant that the Charter's principles remain wishful thinking. While some newspapers have long had in-house codes of conduct, such as the French-language daily *Liberté*, this is not common practice in the sector.

At the same time, media have engaged positively in numerous programmes focusing on the region and the country to promote journalistic ethics and better practices in the media. These include the Ethical Journalism initiative led by the International Federation of Journalists (IFJ), and various programmes and meetings initiated by the country's media themselves. In 2010, for example, a conference on self-regulation sought to re-establish the Supreme Press Council, promote the adoption of ethical charters within newsrooms, and promote the provision of training on ethical journalism, as well as respect for copyright and other conditions for the re-publication of information.<sup>83</sup>

In 2013, an EU-funded programme on media ethics was launched in Libya, Tunisia, Algeria and Morocco, which included the development of a Code of ethics for the press in the Maghreb. Media actors in the partner countries were involved in a series of discussions which led up to the adoption of the regional Charter.<sup>84</sup>

But the struggle of the media profession in Algeria with hate speech is a growing source of concern. In 2013, Media Line reported that Algerian newspaper content was becoming increasingly sensationalist, and that the press had "resorted to the 'wow' factor to sell more copies",<sup>85</sup> while avoiding genuine criticism of the real powers in the country.

There have also been reports about some media publishing racist attacks against certain groups including African immigrants and Chinese workers, and a rise in hate speech against secularists, liberals and Islamists alike.

Offensive language has been used against various groups, such as Sub-Saharan Africans being described as "slaves" and Chinese residents as "dog eaters".<sup>86</sup> A story published by *Al Shourouk* in November 2014 was particularly striking in this regard. To illustrate a news article on a football match between Algeria and Mali, the conservative newspaper published a photo of an African fan entitled: "Unwelcome, Mr. Aids is in your trail, Ebola ahead of you".<sup>87</sup>

The same year, the paper also published controversial articles about the wearing of the hijab (women's religious veil) in Algeria, polygamy and religiousness vs. atheism, juxtaposing 'good'

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<sup>82</sup> Abdelkrim, 2009, *Charter ethics press in Algeria*: <http://communication.akbarmontada.com/t149-topic>.

<sup>83</sup> See <http://ethicaljournalisminitiative.org/ar/countries/11>.

<sup>84</sup> See: [http://eeas.europa.eu/archives/delegations/tunisia/documents/more\\_info/codedeontologie\\_jan2013\\_fr.pdf](http://eeas.europa.eu/archives/delegations/tunisia/documents/more_info/codedeontologie_jan2013_fr.pdf).

<sup>85</sup> Shock and Horror: Algerian press ape sensationalist British tabloids  
<https://www.theguardian.com/media/greenslade/2010/apr/16/press-freedom-algeria>.

<sup>86</sup> *Jazaires news*, 23 July 2009, *Al Jazaires news*. Available at: <http://www.djazairnews.com/djazairnews/1397>.

<sup>87</sup> New York Times, 2 May 2016, *A Muslim and black in Algeria*. Available at: [https://www.nytimes.com/interactive/2016/05/02/opinion/kamel-daoud-black-in-algeria-then-you-d-better-be-muslim-arabic.html?\\_r=0](https://www.nytimes.com/interactive/2016/05/02/opinion/kamel-daoud-black-in-algeria-then-you-d-better-be-muslim-arabic.html?_r=0).

believers and ‘bad’ secularists and atheists, whom it called “sorcerers”, thereby inciting intolerance and hatred against them.<sup>88</sup>

In March 2016, however, the newspaper’s Academy organised a conference on ethics and better practices in the Arab region, with a focus on how to report on terrorism. It published its key findings and adopted a number of recommendations to combat violence and extremism in the media.<sup>89</sup>

The long-standing conflict between Algeria and Morocco regarding the Western Sahara issue is a source of routine hate speech in both Algerian and Moroccan media. An article titled *Algérie-Maroc : Tourbillon de haine sur le web*, published in February 2014 on Algerian Vox, strongly criticised media outlets for simply repeating in their news coverage the official positions of their respective governments against the neighbouring country, and for inciting hate and sectarianism among readers in both countries.<sup>90</sup>

The long established but inactive Syndicat national des journalistes (SNJ), the country’s journalists’ union, has done little in this area. In 2016, a “National union of journalism honour”, which aims to promote ethics among journalists, was established. It published an ambitious programme to deliver its goals, which includes reactivating the Supreme Ethical Council. The results of this initiative and its programme are, however, yet to be seen.<sup>91</sup>

## Egypt

Egypt’s media sector is the largest and most influential in the region. Its long-established State-owned media, which employs some 70,000 workers, has dominated the national media landscape for decades, although it has been struggling to maintain its audience in the wake of the Arab Spring and in its aftermath, losing ground to private media. Indeed, the 25 January 2011 uprising led to a media boom of satellite broadcasters, print and electronic media. The general chaos that accompanied the revolution on the ground was matched by a chaotic media boom and partisan media coverage of the transition. Public and private media alike soon “fell prey to political interests and sensationalism”.<sup>92</sup>

Since 2011, hate speech of a political, religious, ethnic and xenophobic nature has been on the rise in the national media. Media reflect underlying political tensions, and hate speech against opposing political groups and figures, religious minorities, including Shia Muslims and Christians, and foreign powers, perceived as “enemies of the nation”, has flourished.

Foreign residents in Egypt, particularly those of Syrian and Palestinian extraction, have been portrayed as meddling in Egyptian politics, which has resulted in threats against them. For example, the Palestinian community has been victimised due to Hamas’ support for the Muslim Brotherhood, which has been a prime topic for hate speech in the media. The West’s support for the revolution, which has

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<sup>88</sup> See: <http://www.algerie-focus.com/2014/11/medias-lincroyable-campagne-de-haine-lancee-contre-les-athees-algeriens/>.

<sup>89</sup> Darwish, S., 6 March 2016, *Professional Controls and the Ethics of Practice: Arab Media and Counter Terrorism* (Arab Center for Research and Studies). Available at: <http://www.acrseg.org/39978>.

<sup>90</sup> <http://www.agoravox.fr/actualites/international/article/algerie-maroc-tourbillon-de-haine-147379>.

<sup>92</sup> Yasser Abdel-Aziz, “The media malaise”, Al Ahram Weekly December 2014: <http://weekly.ahram.org.eg/News/8001.aspx>.

been perceived as interference in local affairs, led to a crackdown on civil society, with a number of international NGOs being accused of operating illegally in Egypt. TV ads have warned of the consequences of working with or giving information to foreigners, who are sometimes seen as potential spies.<sup>93</sup> In addition, the media have used xenophobic language to describe African residents and refugees.

In the context of rising conservatism and concern about blasphemy, the publication by the French magazine Charlie Hebdo of satirical cartoons was presented by key State-owned Egyptian media as contemptuous of religion and a form of hate speech.<sup>94</sup> Private Islamist channels have stirred up hatred against religious minorities and even incited violence against them. There have been several incidents of Shiites being lynched<sup>95</sup> and numerous attacks against Christians and their places of worship have taken place.

A counter-example is an article by Bassem Youssef, a widely renowned news anchor, comedian and government critic, published by *Al Shorouk* newspaper, which criticised hate campaigns against Syrians, Palestinians and Sudanese, noting: "Liberals who hate the Brotherhood represent a revised version of fascism and racism, and this is not different from inciting against Islamist Shiites, Baha'is and Christians."<sup>96</sup>

In this dark context, a number of positive initiatives and better practices should be highlighted. The Egyptian Journalists' Honour Charter<sup>97</sup> includes an article calling on journalists to respect a number of standards including: not aligning their work with racist ideas, avoiding abusing religions, calling for hate, challenging others' faiths or calling for discrimination or contempt against any religion. The terms used here are quite general and broad, which makes it difficult to determine what is deemed to be legitimate journalism and what represents incitement to racial or religious hatred.

The media itself has produced a number of reports in a genuine exercise of introspection and auto-criticism of hate speech.<sup>98</sup> The Institute of Al-Ahram Regional Press (AHRJ) conducted a study on the importance of self-regulation and media ethics. The study focuses on media systems and several eastern and western models and clarifies concepts and methods of self-regulation. It also highlights innovative ways to put in place a system of self-regulation and to promote socially responsible content in the media.

*El-Watan* newspaper published a set of ethical rules in 2015. Article 10 states that the newspaper will avoid promoting hatred, discrimination and incitement. Article 12 commits the newspaper to avoiding defamation, violations of privacy and abuses of the Egyptian people.<sup>99</sup>

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<sup>93</sup> Hate speech Key concept paper published in July 2016 by the Mecodem  
[file:///C:/Users/sarahb/Downloads/Hate Speech in Egypt Kenya Serbia and So.pdf](file:///C:/Users/sarahb/Downloads/Hate%20Speech%20in%20Egypt%20Kenya%20Serbia%20and%20So.pdf).

<sup>94</sup> *Ibid.*

<sup>95</sup> Lynching of Shiites in Abu Musalam, Giza in 2013.

<sup>96</sup> Alrakoba, 17 July 2013, '*Racist Spirit* ' against Syrian refugees in the Egyptian media. Available at:  
<http://www.alrakoba.net/news-action-show-id-107730.htm>.

<sup>97</sup> This was adopted by the Higher Council for Journalism on 26 March 1998. Available at:  
<http://ncmf.info/?p=151>.

<sup>98</sup> Al Jazeera Arabic, 31 July 2015, *Hate speech in the Arab press*. Al Jazeera Arabic, available at:  
<https://www.youtube.com/watch?v=Gboq0wvbMtk>.

<sup>99</sup> Ghitani, I., 2015, *Al Watan published the «Code of Professional Conduct» for media*. Available at:  
<http://www.elwatannews.com/news/details/866839>.

In May 2011, Egyptian journalists renewed their commitment to the Egyptian Journalists' Code of Conduct, adopted by the Supreme Press Council in 1998. The Code prohibits incitement to racism or contempt against any community, the publication of accusatory and unsubstantiated allegations, and of libellous or defamatory content. It also prohibits hate speech, incitement to violence and war, and discrimination based on race, gender, religion, creed or social origin.<sup>100</sup>

Following a series of meetings between the Egyptian Journalists' Syndicate (EJS) and a number of editors-in-chief, a Code of Conduct was adopted in September 2015 on a joint basis by the EJS, the Radio and TV Union (ERTU), and the representatives of the media industry. This represents a key achievement for the profession.<sup>101</sup>

At an academic level, the Department of Journalism and Mass Communication at the American University in Cairo (AUC) has engaged in long-term efforts to challenge hate speech in the Arab media. For example, it held a series of seminars Cairo on this issue between 2013 and 2016. It is currently developing, in cooperation with the Jordan Media Institute and the Ethical Journalism Network, a glossary and a monitoring programme on hate speech.

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<sup>100</sup> Council, P., 1998, *The Charter of Honor for Egyptian Jouranlists*. Available at: <http://ncmf.info/?p=151>.

<sup>101</sup> Al-Arab newspaper, 15 December 2015, *Code of Conduct of the Egyptian Media*, N. 10128 , p. 18. Available at: <http://alarab.co.uk/?id=68601>.



## Jordan

Jordan, which lies in the middle of a war-torn region, has faced massive challenges due to the conflicts in the countries which neighbour it, including Iraq, Palestine and Syria, the rise of terrorism and a challenging economic situation. The worsening of the Syrian crisis and the negative repercussions of this for Jordan have resulted in an increase in the latent tensions which already exist in society.

Key media stakeholders gathered in Amman in December 2014 at a conference hosted by the Jordanian Media Institute (JMI) noted that although the refugee crisis was the main story in Jordan, to their credit the media had not committed major ethical violations while covering it and had not engaged in hate speech against refugees and immigrants.<sup>102</sup>

However, as noted above, serious concerns over hate speech in the media have prompted new regulations to counter it in Jordan. In addition, sectarianism and radicalisation in both the social and traditional media have become a matter of increasing social debate.

Efforts have been made to promote self-regulation and media education in the country, in an effort to limit and prevent hate speech. As noted above, the Jordanian Press Association's Code of Conduct, adopted in 2003, includes various rules in this area. However, the code, which is legally binding, has been criticised for not representing an independent system of self-regulation and its use has been controversial.<sup>103</sup>

There have also been attempts to create an independent complaints mechanism for the media. Jordan's 2011-2015 National Media Strategy calls for better media practices, the adoption by media outlets of in-house codes of conducts and the publication of internal editorial policies, and the development of an independent Complaints' Council, consisting of experienced media professionals and retired judges. Discussions about establishing this mechanism are ongoing. The strategy also calls for the appointment of internal auditors to check media content and the revision, by the country's journalists' union, the Jordan Press Association (JPA), of its Code of conduct to cover social media.<sup>104</sup> The latter, however, remains controversial. Despite this, self-regulation within mainstream media outlets in the country remains limited, although most do at least offer their readers a right of reply.

On the academic side, The Jordan Media Institute (JMI) has worked to develop a programme to promote educational programmes covering media ethics and to monitor hate speech in the media, and it has organised various events on this issue. In October 2015, the Jordan News Agency Petra organised a joint conference with the League of Arab States and discussed ways to counter radicalised speech in the traditional and social media.

In terms of the social media, an initiative launched in 2015, Youth to Combat Online Hate Speech in Jordan, has trained dozens of young people on how to counter hate speech and to engage in positive and constructive dialogue online. Launched by iDare, a non-profit Jordanian organisation, it organised

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<sup>102</sup> See: <http://www.jmi.edu.jo/en/details/3152/Closing-statement-for-the-conference-Syrian-Refugees-in-Jordan-The-Question-of-Society-and-Media>.

<sup>103</sup> UNESCO's Media Development Indicators, Jordan. Available at: <http://bit.ly/2qdOC59>.

<sup>104</sup> JRTV, 2011, *Jordanian Media Strategy*. Available at: [http://www.jrtv.jo/page.aspx?page\\_key=key\\_strategy&lang=ar](http://www.jrtv.jo/page.aspx?page_key=key_strategy&lang=ar).

a conference in October 2015 in cooperation with Al Rai Centre for Strategic Studies on the dangers of hate speech in education and social media.

In a positive development, on 12 October 2016, Dr Mohammad Momani, Minister of State for media affairs, Mr. Tariq Momani, Head of the Jordan Press Association, and Jim Boumelha, President of the International Federation of journalists, signed the *Arab Declaration on Media Freedom*,<sup>105</sup> becoming the third country, after Palestine and Tunisia, to do so.

## Lebanon

Media discourse in Lebanon reflects the country's recent history of conflict, its pluralistic religious identity, a fragile demographic equilibrium and the interference of religion and politics in the media.

Hate speech in the media is a challenge which is rendered more complex due to the political and religious funding of the majority of media outlets in the country. The interference of Syria in the country's politics, as well as the Palestinian and Syrian refugee crises, have also greatly impacted the media. As of 1 July 2014, some 450,000 refugees were registered with UNRWA in Lebanon, with many living in the country's 12 refugee camps.<sup>106</sup> The refugee situation dates back to the creation of the State of Israel in 1948, and the crisis has deepened over the years, with successive waves of migration. The Syrian conflict, which erupted in 2011, has forced hundreds of thousands of Syrians to flee to Lebanon for safety.

Media coverage tends to depend on the political allegiance of the media in question.<sup>107</sup> In terms of refugees, news coverage has shifted from being primarily humanitarian in nature – i.e. with refugees being seen as victims who should be sheltered – to becoming more hostile, following the rise of crime which has accompanied the recent rise in refugees and fears about permanent settlement of the refugees and the demographic implications of this.

In July 2016, an LBC TV report showed Syrian children being insulted and forced to kneel in front of Lebanon's flag, prompting the presenter to make the following comment: "Making foreign children kneel down under Lebanon flag is a penalty accepted by the law".<sup>108</sup> The story, uncommon enough, sparked outrage. Despite this, the head of live outdoor broadcasting at LBC's TV channel, Lara Zaloum, declared that, "the channel's policy is to stop live transmission if hate speech, or racist commentary or incitement comes up during live coverage of an event such as a seminar, press conference, demonstration or sit down."

On social media, rival campaigns were launched in favour of and against the presence of Syrian refugees in the country. A "Racism observatory" was launched on Facebook to combat racism and violence perpetrated against Syrian refugees.

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<sup>105</sup> *Declaration on Media Freedom in the Arab World*. Available at: <http://www.med-media.eu/library/declaration-media-freedom-arab-world/>.

<sup>106</sup> UNRWA Facts sheets. Available at: <https://www.unrwa.org/where-we-work/lebanon>.

<sup>107</sup> <http://www.maharatfoundation.org/Temp/Files/aa82f8f5-c749-4c14-833b-dfa591a67324.pdf>.

<sup>108</sup> El dorar news, 27 July 2016, *Aggravation of racism towards the Syrian refugees in Lebanon*. Available at: <http://eldorar.com/node/100053>.

Self-regulation in such charged political climate and highly partisan media is limited, and there is no effective accountability mechanism for the media in the country. The 1974 Code of conduct of the Press Editors Syndicate, which acts as a journalists' union with an accountability system, upholds international standards of media freedom and journalism ethics.<sup>109</sup> The organisation, however, has long been paralysed and has no effective accountability mechanism.<sup>110</sup>

The Charter of Media Honour to Promote Civil Peace in Lebanon<sup>111</sup> sets out the principles that media outlets must respect. These include not provoking sectarian strife or sectarianism and rejecting racial discrimination, discord and violence. Article 2 of the Charter also calls for a commitment to support national unity, coexistence and respect for religion, and not to provoke sectarian strife or incitement to rebel or commit crimes.

Article 3 of the Charter focuses on the importance of the Lebanese media rejecting racial discrimination. Article 11 highlights the importance of ensuring that newspaper editorials, news broadcasts, radio and television talk shows and other audio-visual content respect professional media standards and do not promote violence and discord.

In 2013, a Journalists' Pact for Strengthening Civil Peace in Lebanon<sup>112</sup> was signed by 34 media outlets. It was developed with the support of the UNDP Peace Building in Lebanon project, as was based on input from media outlets. Comprising 16 articles, it reaffirms the Lebanese media's leading role in rejecting discrimination and promoting civil peace, and covers issues relating to media ethics and the duties of journalists and media outlets.<sup>113</sup> Article 2 stipulates: "Journalists shall commit to strengthen national unity and coexistence, respect religions, refrain from instigating sectarian or confessional strife..." while Article 3 asserts that Lebanese media should denounce racial discrimination.

In 2015, Maharat Foundation published a study entitled The representation of Syrian and Palestinians in News Coverage,<sup>114</sup> which monitored the portrayal of different communities in Lebanese newspapers. It analysed television, radio and news websites in February 2015 and the commitment of the signatories to the Journalists' Pact for strengthening Civil Peace in Lebanon to the principles enshrined in the pact. Some key findings of the study were:

- Stories on Syrians and Palestinians were mostly on the inside pages and almost never on the front page.
- Negative reports often stem from the fear that Syrians refugees could be members of terrorist groups.
- There is a trend towards exaggerating and manipulating facts and figures on the refugees, and relaying political calls for radical solutions, such as the repatriation of refugees.

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<sup>109</sup> Almustaqbal, 2009, *Lebanese media and codes of conduct*. Available at: <http://www.almustaqbal.com/v4/Article.aspx?Type=np&Articleid=351329>. See also <https://www.facebook.com/Orlb>.

<sup>110</sup> See: <http://www.orlb.org/>.

<sup>111</sup> Charter of Media Honour to Promote Civil Peace in Lebanon. Available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/Final%20Journalist%20Pact%20for%20Strengthening%20Civil%20Peace%20-%20AR.pdf>.

<sup>112</sup> See: <http://bit.ly/2pn3wZh> (Arabic) and <http://bit.ly/2qkmYY3> (English).

<sup>113</sup> UNDP news article. Available at: <http://www.lb.undp.org/content/lebanon/en/home/presscenter/articles/2015/09/28/-religious-incitement-and-hate-speech-in-news-media-coverage-.html>.

<sup>114</sup> See: <http://www.maharatfoundation.org/Temp/Files/34fe6730-d7da-495f-8048-0dafd8165064.pdf>.

- There is condemnation by the media of the lack of burden-sharing by other countries in the face of a growing refugee crisis, as illustrated by an article published by daily Al Joumhouriya newspaper in July 2015, entitled: “Before Lebanon Becomes a Depot for War Refugees”, which noted that no country had faced refugee numbers that almost match its population.

## Morocco

The Arab Spring has caused less turmoil in Morocco than in most of the rest of the region. The country may be one of the most stable in the region, but it nonetheless faces its own hate challenges, and these are inevitably reflected in the local media.

One challenge in the increasing numbers of refugees and immigrants from the continent travelling to or through Morocco.<sup>115</sup> Immigration from sub-Saharan Africa has been going on for decades. Other social issues such as religion, violence against women, discrimination against people with disabilities and the exploitation of children<sup>116</sup> are reflected in hate speech seen in the media. The country’s Constitution, reviewed in 2011, guarantees equality and diversity but discrimination, conservatism and racism all have deep roots in Moroccan society.

The broadcast regulator, HACA, has conducted or been part of numerous initiatives addressing hate speech in the media, in addition to its regulatory role. In May 2016, a joint action by HACA and its counterparts in Tunisia (HAICA) and the Ivory Coast (HACA) was launched to monitor hate speech in the media, raise media outlets’ awareness about the issue and enhance the relevant monitoring skills of the three authorities.

A Code of Conduct was adopted in 2001 by the print media, under the aegis of the Syndicat national de la presse Marocaine<sup>117</sup> (SNPM). But a practical mechanism to make the press accountable has long been awaited in the country. Law 90-13 was finally adopted in December 2015, creating the National Press Council (CNP), whose role is to ensure professionalism and respect for ethics by the profession through its power “to propose the judicial withdrawal of the press card in case of serious misconduct”.

The CNP is comprised of 21 elected members, as follows: seven professional journalists elected by their peers, seven press editors also elected by their peers, and seven representatives of cultural and civil society organisations such as the Writers’ union, the National Human Rights Council, the Bar society and so on. However, it has so far not been possible actually to establish the CNP as a functioning body, due, apparently, to the complexity of the electoral process.<sup>118</sup>

In the meantime, some stories run by the media have created shock and controversy due to their hate speech content. In November 2012, a weekly magazine, MarocHebdo, published an issue with a cover

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<sup>115</sup> The Question of Hate in Morocco, *Al-Monitor*. Available at: <http://www.al-monitor.com/pulse/culture/2014/01/racism-black-slavery-morocco.html>.

<sup>116</sup> See: <http://www.moroccotomorrow.org/moroccans-say-no-to-hate-speech/>.

<sup>117</sup> See: <http://lematin.ma/journal/2001/Adoption-d-un-code-de-deontologie-de-la-presse/9447.html>.

<sup>118</sup> See: <http://www.medias24.com/MAROC/SOCIETE/172518-La-mise-en-place-du-Conseil-national-de-la-presse-accuse-du-retard.html>.

picturing a young black man and titled the “Black Peril”. It led to outcry and protests from readers, anti-racism organisations and rights defenders in Morocco and beyond.<sup>119</sup>

Red lines still exist in the country regarding religious issues, but a 2016 story highlights the attitude the media profession can take against hate speech. An ultra-radical cleric had attacked 2M Channel over its reporting on a traditional Muslim celebration, publishing inflammatory allegations on social media, which were relayed on the mainstream media, about the channel having a foreign agenda and being funded by Zionists. The SNPM led a strong action against the smearing campaign and the Channel lodged a legal complaint.<sup>120</sup>

Another example of this was in December 2015, during a programme on radio channel Aswat. The journalist had posed the question “Who the enemies of Islam were”, and incited listeners to point to “Jews” as an answer. The Channel was subsequently given a warning by the HACA, for its disregard of legislative and regulatory provisions dictating respect for other religions, religious values and non-incitement to hatred.<sup>121</sup>

The question of violence against women in the country, and the way the media cover women and women’s issues, has also been the subject of some public debate. Referring to media stereotyping of women and citing a 2011 study by UN Women which revealed that about “60 percent of Moroccan women have experienced some form of violence recently”, analyst Hafsa Oubou noted that “portraying women as victims, as uneducated, or as a source of scandal may exacerbate social troubles and violence against women”.<sup>122</sup> Similar conclusions have been drawn by other observers regarding the long-standing discrimination against women, which is often exacerbated by media coverage.<sup>123</sup>

The No Hate Speech in Morocco initiative, which builds on the Council of Europe sponsored No Hate Movement in that region, focuses on the youth’s role in combating hate speech. It equips young people and youth organisations with the competences necessary to recognise and act against hate speech and racism online. The initiative works with local organisations and supports awareness raising activities and training workshops for youth.<sup>124</sup>

## **Palestine**

Despite ongoing conflict, a de facto occupation, and several wars which have seriously undermined the country, particularly in Gaza, there has been a genuine drive from Palestinian media to set standards in the profession, to strengthen journalism ethics and to fight hate speech in the media. However, with the ongoing political turmoil and in the absence of an audiovisual regulator or a Press Council, Palestinian media have struggled to uphold these standards.

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<sup>119</sup> See: <http://www.courrierinternational.com/article/2012/11/09/pourquoi-le-peril-noir-de-maroc-hebdo-provoque-l-indignation>.

<sup>120</sup> See: <http://www.journaux.ma/actualite/21402>.

<sup>121</sup> See: [http://telquel.ma/2016/06/08/emission-aswat-sanctionne-incitation-haine-juifs\\_1500895](http://telquel.ma/2016/06/08/emission-aswat-sanctionne-incitation-haine-juifs_1500895).

<sup>122</sup> See: <http://www.aquila-style.com/focus-points/muslimlifestyle/perception-reality-media-womens-rights-morocco/68736/>.

<sup>123</sup> See: [http://www.media-diversity.org/en/additional-files/MDI\\_Observatory\\_Study\\_FINAL\\_TEXT\\_-\\_Copy.pdf](http://www.media-diversity.org/en/additional-files/MDI_Observatory_Study_FINAL_TEXT_-_Copy.pdf).

<sup>124</sup> Alaan, 2016, *The National Campaign Launched with title “No to Hate Speech in Morocco”*. Available at: <http://alaan.ma/news.php?extend.216>.

In this context, Israel has also levied charges against media outlets of inciting hate speech and violence against it. It has shut down, on these grounds, dozens of media outlets in the West Bank, and arrested and charged dozens of journalists for disseminating hate. For example, in August 2016, Al Sanabul radio broadcasting from Dura, Jericho, was shut down for three months, its equipment seized and its staff arrested for inciting hate against Israel.<sup>125</sup> Five of its journalists remain in jail at the time this report is being published.

Political strife between the Palestinian authorities in the West Bank and the Gaza Strip has created an additional layer of complexity, along with proxy wars in the media. Each side has used its own political agenda to define and condemn hate speech, creating a steady flow of hate speech.

In this context, various initiatives have emerged to discuss and agree on ethical standards for the media. In 2011, twenty representatives of different Palestinian media outlets signed a code of conduct regarding professional coverage of elections, with provisions against incitement to violence and calling for objective and equal coverage of candidates.<sup>126</sup>

The Code of Conduct adopted in 2012 by the Palestinian Journalists' Syndicate (PJS) is central to media self-regulation in the country. The Code emphasises the values of tolerance and condemns defamation, incitement to violence or hate against any person or entity or institution based on gender, race, religion or political affiliation.<sup>127</sup> It also rejects all forms of censorship of the media and calls on journalists to verify the accuracy of the information they publish and to ensure that news headlines reflect the facts of the story.

The Code also includes provisions aimed at preventing the promotion of personal, family or political agendas, and for protecting women and children from exploitation. It calls for the protection of journalists' sources and stresses that journalists should not sell information to more than one media outlet.<sup>128</sup> Crucially, The Palestinian Journalists' Syndicate has an Ethics' Committee with a complaints mechanism, which looks into violations of journalistic ethics by national media.

Birzeit University's Media Development Center, which is also active in this field, published a booklet calling on Palestinian media outlets to adopt codes of conduct and put in place systems of self-regulation, and also recommending the creation of a complaints council.

In terms of individual media outlets, it is worth mentioning the Code of Conduct adopted by Nisaa FM, a women-focused community radio, which bans broadcasting news that promotes violence, hatred or intolerance, in particular based on religion, ethnicity, nationality or gender. The Code also calls on the station to support the ability of women to live peacefully, safe from social violence.<sup>129</sup>

In August 2016, Palestine became the first country to sign the *Declaration on Media Freedom in the Arab World*. The Declaration, which includes a call for both States and the media to combat hate

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<sup>125</sup> SamaNews. Available at: <http://samanews.ps/ar/post/279643> ; <http://bit.ly/2qNN0D8>.

<sup>126</sup> ERIS, 2012, *A Code of Conduct on Media Coverage of the Elections*: [http://www.cfip.org/pdf/code\\_of\\_conduct.pdf](http://www.cfip.org/pdf/code_of_conduct.pdf).

<sup>127</sup> PJS, 2016. Available at: <http://www.pjs.ps/ar/pjs2/code-of-Conduct>.

<sup>128</sup> PJS, 2016, *The Code of Conduct for Professional Media*. Palestinian Journalists Syndicate, available at: <http://www.pjs.ps/ar/pjs2/code-of-Conduct>.

<sup>129</sup> See: <http://www.radionisaa.ps/>.

speech, was signed by the Palestinian media community and human rights defenders on 1 August 2016 and by President Mahmoud Abbas on behalf of Palestine on 2 August.

## Tunisia

The birthplace of the Arab Spring, Tunisia has been at the forefront of democratisation and media reform in the region. Key legislative and regulatory texts enshrining media freedom have been adopted in the aftermath of the Jasmine revolution, and national media have engaged strongly in processes of self-regulation, promoting accountability and ethics, and combating hate speech in the media.

Despite this, there have been growing concerns in the country over unethical journalism and hate speech in the media. “Many Tunisians believe that some media have become tools to settle accounts, slander, propagate false information and spread speeches of violence and hate,” declared Néji Bghouri, President of the Tunisian journalists’ union, the Syndicat national des journalistes tunisiens (SNJT), recently.<sup>130</sup>

Many Tunisian media outlets have adopted codes of conduct as a form of self-regulation, although direct references to hate speech in these documents are uncommon. The SNJT’s Code of Conduct calls on media to respect the truth and avoid defamatory contents or defamatory quotes, but it lacks provisions calling on journalists to avoid hate speech and incitement<sup>131</sup>. The union has an Ethics Committee which monitors the traditional and new media for compliance with the Code.

In 2015, a series of workshops for media professionals on migration and human rights, organised by the Tunis-based Arab Institute for Human Rights (AIHR), the United Nations High Commissioner for Refugees (UNHCR) and the SNJT, led to the drafting and adoption of a Code of conduct for media coverage of refugees and asylum seekers. The Code defines migrants, asylum seekers and related groups, and calls for respect for international and national legislation, compliance with journalistic ethics in general and, in particular, the values of accuracy, impartiality, integrity, balance and public interest.<sup>132</sup> The AIHR, the UNHCR and the SNJT committed themselves to respect the standards set out in the Code and urged media professionals to adopt them formally.

In June 2016, a survey of the print and electronic media conducted by the SNJT’s Observatory of Ethics was published. The survey, which covered 19 papers, digital media and electronic websites in Tunisia, selected according to prevalence and diversity criteria, concluded that many Tunisian newspapers contributed to the spread of the discourse of violence and hatred and even praise terrorism.<sup>133</sup>

The survey found that the total number of violations in the media regarding terrorism issues was 4,719, while there were 276 cases of hate speech, including insulting, discriminating against and calling for the exclusion of and retaliation against different groups. In terms of terrorism, the main

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<sup>130</sup> See: <http://www.ifj.org/nc/news-single-view/backpid/1/article/ifj-welcomes-establishment-of-independent-press-council-in-tunisia/>.

<sup>131</sup> SNJT’s Code of conduct. Available at: <http://snjt.org/wp-content/uploads/2016/10/%D8%A7%D9%84%D8%B4%D8%B1%D9%81-.pdf>.

<sup>132</sup> News article and Code of Conduct on Asylum and Migration @ belaidnouha. Available at: <http://bit.ly/2pmLHei>

<sup>133</sup> See Observatory’s site <http://snjt.org/مرصد/> and AJO: <http://bit.ly/2lk6LLG>.

issues are the terminology used to describe terrorist groups, re-publication of terrorist propaganda, a lack of accuracy and objectivity, and the publication of terrorist records.

The survey also indicated that most of the violations were committed by the author of the article and to a lesser extent by the editorial administration. Hate speech was recorded in relation to the issues of political, terrorist, economic, regional, tribal, religious, entertainment, sports, security, corruption and bribery. The report recommended that the media take care when dealing with content published by violent groups which disseminate terrorist ideology and glorify terrorism, along with greater attention to accuracy and fact checking. It also warned against the publication of hate speech and material inciting to violence.

A couple of examples illustrate these findings. In November 2015, the Tunisian government sacked the head of State television after El Wataniya 1 broadcast a picture of the severed head of a teenager beheaded by extremists. The dismissal came a day after the Tunisian journalists' union strongly criticised the channel for broadcasting the picture in a news bulletin. It said El Wataniya 1 had committed a "major professional error" and urged journalists generally to respect the rules of "covering terrorism".

In 2016, the Tunisian Alhiwar television channel illustrated demonstrations in Alqasreen region with a picture it claimed came from Aljazeera. The picture had actually been taken in January 2014 in the city of Firianah, not Alqasreen. Subsequently, Ahiwar officially apologised to Aljazeera for its mistake.

The SNJT's Observatory has played a key role promoting journalistic ethics and self-regulation, pending the creation of a national Press Council. Very recently, on 20 April 2017, the Tunisian Press Council was launched, following a process started at the end of 2012. The Tunisian National Union of Journalists (SNJT) was central to efforts to establish the Council, which will serve as a self-regulatory body and will be responsible for drafting a code of ethics. The Council will also have a range of tools available to it to address breaches of the code, including warnings and, ultimately, the power to revoke the professional (press) card of journalists who violate ethical principles.

In the audio-visual sector, the country's regulator, HAICA, is central to monitoring and taking measures against hate speech disseminated by broadcasters. In addition to its regulatory role, the HAICA has led or contributed to various initiatives addressing hate speech in the media. In 2015, it launched a study on hate speech in broadcasting in Tunisia, with the support of the UNHCR, founded on a human rights based approach. As noted above, in May 2016 a joint awareness raising action was launched by HAICA and its counterparts in Morocco and the Ivory Coast.

Finally, on 26 August 2016, Tunisian President Beji Caid Essebsi became the second Head of State to sign the *Declaration on Media Freedom in the Arab World*. The Declaration was signed at an event which included representatives of the IFJ, the SNJT, the Union générale des travailleurs tunisiens (UGTT), the Office of the High Commissioner for Human Rights and UNESCO, after being endorsed by heads of all parliamentary groups the previous day. The official signing was followed by a national meeting of more than 150 individuals representing media organisations, editors, trade unions, national commissions and institutions, and journalists, who also signed the declaration.<sup>134</sup>

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<sup>134</sup> See: <http://www.ifj.org/nc/en/news-single-view/backpid/1/article/tunisia-signs-the-declaration-on-media-freedom-in-the-arab-world/>.



## *Conclusions*

1. Self-regulation is weak across the Southern Mediterranean, but there are positive trends with the formal enacting of press councils in Tunisia and Morocco, and advanced discussions to establish them in Jordan.
2. None of the eight countries covered by this Report have well established councils or complaints committees.
3. None of the countries even has a code of ethics committee, with the exception of the Palestinian Journalists' Syndicate.
4. Self-regulation in Egypt does not match the importance of the State in terms of history and media development. Research suggests there are no codes of conduct, complaints bodies or steering committees, codes of honour or observatories among Egyptian private TV channels.
5. Most codes of conduct are more common in the private media than in public media outlets.
6. The general situation in the Southern Mediterranean countries needs further initiatives, programmes, policies and measures to be taken by the media to limit hate speech.
7. The television station that focuses most on self-regulation in the countries covered by this Report is Jordan TV.
8. Success in implementation of the codes of conduct which are regularly signed is questionable and the signing seems to be driven by sharp competition to attract audiences and advertisements.
9. Self-regulation strengthens the independence of the media and reduces the power of political and judicial authorities over the media.

## *Recommendations*

- 1- More seminars, conferences and workshops should be held in the Southern Mediterranean region to encourage self-regulation as an aspect of morality and social responsibility rather than by law.
- 2- Awareness should be raised among journalists that self-regulation does not restrict media freedom; rather, it is a voluntary commitment that comes from media outlets themselves. It does not limit competition or equality but aims mainly to protect the rights of others, to improve media quality and to prevent breaches of ethical standards.
- 3- Media outlets should establish media complaints councils or committees to receive complaints against the media from citizens, to consider them and to resolve them, including through attempts to bring together the different parties. These councils should have the power to issue statements on their findings regarding complaints and to urge journalists and media outlets to commit to professionalism and abide by professional codes of honour.
- 4- Arab journalists should visit Western countries where the media have a long history of self-regulation in order to learn about their experiences, including by visiting self-regulatory bodies.
- 5- Journalism courses in the Southern Mediterranean should offer media ethics courses, including on self-regulation.
- 6- Individual newspapers and broadcasters should be encouraged to adopt codes of conduct.

## **PART II – RECOMMENDATIONS AND GUIDELINES ON HOW TO ADDRESS HATE SPEECH AND RACISM**

### Introduction

The question of how best to address hate speech in the media and other forms of media content which promote or support racism or discrimination is complicated. There are several potential ways to approach the issue. One is via criminal prohibitions on certain types of speech, which is the most intrusive way to address hate speech but also arguably needed given the serious potential implications of this sort of speech. Another is via civil law rules which allow those who have been harmed by hateful speech to be civilly compensated for that harm. A third is through administrative law rules and, in particular, the rules governing the media, as part of the regulatory system. Finally, the media might, of its own motion, establish complaints bodies and systems to promote professionalism in the media, including to address racist speech, as a form of self-regulation.

The matter is further complicated by a number of factors. First, some of the statements on this in international law make it clear that the State is under a human rights obligation to formally or legally prohibit at least certain forms of racist speech, mostly the more serious forms, what might be termed hate speech.

Second, it can be difficult to maintain an appropriate balance in this area between freedom of expression and of the media, on the one hand, and the need to support equality and the equal participation of individuals in society (and to avoid the public order and even national security risks that can be created by more extreme and widespread forms of hate speech), on the other. This is exacerbated in the Southern Mediterranean region (as elsewhere) by the high degree of politicisation of many forms of racism, as well as the weak tradition of respect for international standards regarding freedom of the media.

Another complicating factor is the growth in alternative forms of expression which run alongside the legacy media – such as social media – which are hard to bring within more traditional media regulatory frameworks and, indeed, hard to bring within even criminal law frameworks.

Finally, the lack of independence not only of official bodies but also of journalists' and other types of media associations, along with a very weak tradition of proper self-regulation in the region, undermines this as a potential alternative to legally sanctioned regulatory approaches.

This Part of the Report looks at the different options for addressing racist speech in the media and assesses their pros and cons. It is not always possible to come up with very specific recommendations which are applicable to every country, given the enormous range of social, political and developmental situations. But a sensible assessment of the recommendations, taking into account the pros and cons of different approaches, should lead to solid conclusions for any particular country.

## Key International Standards

One of the challenges in identifying key international standards in this area is the lack of precision around the very topic. There is a world of difference, for example, between an extreme version of hate speech and speech which is mildly stereotypical, although, at the same time, even the latter can sometimes serve as a surrogate way of promoting racism. If we accept equality as the core value that rules – of whatever sort – on addressing hate speech and racism, particularly in the media, aim to promote, then we find a strong basis for this value in international law.

The very first article of the *Universal Declaration on Human Rights* (UDHR), the flagship international statement on human rights which was adopted by the UN General Assembly in 1948,<sup>135</sup> states: “All human beings are born free and equal in dignity and rights.” The second article asserts the right to equal enjoyment of the rights and freedoms recognised in the UDHR, “without distinction of any kind, such as race, colour, sex, ...”. Several other articles in the document also refer explicitly to the idea of equal enjoyment of various rights.<sup>136</sup>

Perhaps surprisingly, given it was adopted in the aftermath of the Second World War and was to some extent a reaction to the racist atrocities committed by the Nazis, the UDHR does not prohibit hate speech or incitement to hatred, although incitement to discrimination is prohibited in Article 7.

As a result, the first international human rights document to directly prohibit hate speech was the *International Convention on the Elimination of all Forms of Racial Discrimination* (CERD), adopted by the UN General Assembly in 1965.<sup>137</sup> CERD was not only the first treaty to address hate speech, but it was and still is by a good margin the most far-reaching. The key provision on this, Article 4, states, in part:

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

In its General Comment No. 15 of 23 March 1993, the CERD Committee, which is responsible for overseeing State compliance with CERD, refers to four categories to be banned under Article 4(a), namely:

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<sup>135</sup> General Assembly Resolution 217A(III), 10 December 1948.

<sup>136</sup> Article 7 provides for equality before the law, Article 10 for equality in public hearings and Article 21(2) for equal access to the public service.

<sup>137</sup> General Assembly Resolution 2106A(XX), 21 December 1965, entered into force 4 January 1969.

(i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts.<sup>138</sup>

A number of States entered reservations or declarations against Article 4 of CERD, which is generally recognised as being very broad in scope. It is important to note, however, that action under this Article should be taken only with “with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention”, which include freedom of expression.

For our purposes, the *International Covenant on Civil and Political Rights* (ICCPR), adopted by the UN General Assembly in 1976,<sup>139</sup> is probably the more important source of international standards in this area. As of the end of February 2017, it had been ratified by 169 States, including all eight States that are the subject of this Report, namely Algeria, Egypt, Lebanon, Jordan, Morocco, Palestine and Tunisia. Article 20(2) of the ICCPR requires States Parties to prohibit hate speech in terms that are rather different from CERD, as follows:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

The term ‘advocacy’ here is widely understood as incorporating an intent element (i.e. so that this covers advocacy that is done with the intent to produce hatred). The issue of what constitutes ‘incitement’ is complex and has been the subject of extensive analysis in the case law. Suffice it to say for present purposes that it imposes some requirement of nexus – causation, impact, likelihood – between the speech in question and the proscribed result (discrimination, hostility or violence). While ‘discrimination’ and ‘violence’ are both acts, normally defined reasonably precisely in national law, ‘hostility’ is simply a state of mind. As a result, inciting someone to hostility against a group of people based on their nationality, race or religion, even if they did not act on that sentiment, would come within the scope of Article 20(2). Finally, although it is not entirely clear what the phrase ‘prohibited by law’ means, it clearly refers to legislation and this must surely not be limited to media laws, since the rule in Article 20(2) is clearly not restricted to the media. Although it could potentially cover civil law rules, in most countries these rules are criminal in nature.

The Rabat Plan of Action was the product of a long process of debate and discussion globally, including regional discussions in every part of the world. It elaborates on the implications of Article 20(2), taking into account the positive guarantees of freedom of expression that are also found in the ICCPR.<sup>140</sup>

There are three main regional human rights treaties – the *European Convention on Human Rights* (ECHR),<sup>141</sup> the *American Convention on Human Rights* (ACHR)<sup>142</sup> and the *African Charter on Human and Peoples’ Rights* (ACHPR)<sup>143</sup> – all of which provide for non-discrimination in the enjoyment of rights,

<sup>138</sup> See para. 3. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7487&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7487&Lang=en).

<sup>139</sup> General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 3 January 1976.

<sup>140</sup> See paragraphs 14-19 of the Rabat Plan of Action.

<sup>141</sup> Adopted 4 November 1950, entered into force 3 September 1953.

<sup>142</sup> Adopted 22 November 1969, entered into force 18 July 1978.

<sup>143</sup> Adopted 26 June 1981, entered into force 21 October 1986.

respectively at Articles 14, 1 and 2, and also guarantee the right to freedom of expression, respectively at Article 10, Article 13 and Article 9.

Perhaps surprisingly, only the ACHR explicitly calls for hate speech to be banned, at Article 13(5), which states:

Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

This is narrower than Article 20(2) of the ICCPR inasmuch as only incitement to violence or similar illegal acts is covered (and not incitement to discrimination or hostility), but wider inasmuch as it covers broader grounds for these acts (i.e. colour and language in addition to race, nationality and religion).

For its part, Article 17 of the ECHR provides that the guarantees of that treaty may not be interpreted as granting anyone the right to engage in activity aimed at the destruction of any of its other guarantees. The European Court of Human Rights has interpreted this as providing a justification for hate speech laws, although not necessarily as requiring States to adopt them.

Given that rules prohibiting hate speech are automatically a restriction on freedom of expression, it is perhaps useful to outline briefly international standards relating to this right. Article 19 of the UDHR guarantees the right to freedom of expression as follows:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

It is the same article in the ICCPR which guarantees freedom of expression, and in very similar terms to the UDHR:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

It is recognised both under international law and in almost every national constitution that freedom of expression is not absolute and that it may, under certain conditions, be restricted to protect overriding public and/or private interests. Specifically, Article 19(3) of the ICCPR sets out the standards which any restriction must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

This essentially imposes a three-part test against which to assess restrictions. International courts have made it clear that the test is strict and that only carefully designed restrictions will be deemed to be legitimate.<sup>144</sup>

First, the restriction must be provided by law. This goes beyond requiring a restriction to have a basis in law and also requires the law to be accessible and to be “formulated with sufficient precision to enable the citizen to regulate his conduct.”<sup>145</sup> Second, the interference must pursue one or more of the aims listed in Article 19(3). This list of aims is exclusive in the sense that restrictions which only serve other aims are not legitimate. Third, the restriction must be necessary to protect those aims. “Necessary” implies that there is a “pressing social need” for the restriction, that the reasons given by the State to justify the restriction are “relevant and sufficient” and that the restriction is proportionate in the sense that the benefits outweigh the harm.<sup>146</sup>

## Legislation

As noted above, international law requires States to adopt general rules prohibiting hate speech at least as it is defined by Article 20(2) of the ICCPR. A large number of countries have some sort of criminal restrictions on racist speech in place and that is also true of the countries covered by this Report.

It is clear under international law that even restrictions which purport to give effect to Article 20(2) of the ICCPR must comply with the three-part test set out in Article 19(3) of the ICCPR.<sup>147</sup> The rationale is that even where a rule seeks to give effect to Article 20(2), it is still a restriction on freedom of expression which must therefore conform to the standards for such restrictions. Indeed, one of the foremost challenges here is to ensure an appropriate balance between protecting equality and ensuring respect for freedom of expression and of the media.

Most of the countries in the Southern Mediterranean do not include rules along the lines of Article 20(2) of the ICCPR in their constitutions. This is, however, consistent with global practice, and very few constitutions do include such rules. Furthermore, nothing in Article 20(2) suggests that it requires reflection in a constitution. All it stipulates is that such speech shall be prohibited by law. It is clear that a criminal law prohibition on hate speech meets this requirement.

As was highlighted in the section of the Report dealing with legal rules on hate speech, many of these rules in the countries of the Southern Mediterranean use vague, flexible terms. In many cases, they may, as a result, fail to meet the ‘provided by law’ part of the test for restrictions on freedom of

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<sup>144</sup> The European Court of Human Rights, for example, interpreting a similar rule in Article 10 of the ECHR, stated: “Freedom of expression ... is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.” See *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

<sup>145</sup> See *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

<sup>146</sup> See *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights), again interpreting a similar rule in the Article 10 of the ECHR.

<sup>147</sup> See *Ross v. Canada*, 18 October 2000, Communication No. 736/1997, para. 11.1.

expression, which requires restrictions to be set out clearly and precisely. While perfect precision is not possible, States must at least make an effort to draft rules as clearly as possible. A wide range of vague standards are included in the hate speech laws found in the Southern Mediterranean, including references to such things as public peace, security and sedition, the latter of which has long been discredited as being an almost entirely flexible restriction on freedom of expression.

Second, international law suggests that Article 19(3) of the ICCPR does not permit restrictions on hate speech that go beyond the scope of what Article 20(2) requires or at least allows for very limited flexibility here. The drafting history of Article 20(2) shows that it was controversial and that, although it was accepted, there was little if any scope for extending its scope.<sup>148</sup> This is supported by the concurring opinion of Evatt, Kretzmer and Klein in the case of *Faurisson v. France*, before the UN Human Rights Committee, which was about Holocaust denial. They noted that in some cases the right to be free of discrimination may require prohibitions which go beyond the strict parameters of Article 20(2), but only where the statements “can be shown to constitute part of a pattern of incitement against a given racial, religious or national group, or where those interested in spreading hostility and hatred adopt sophisticated forms of speech that are not punishable under the law against racial incitement, even though their effect may be as pernicious as explicit incitement, if not more so.”<sup>149</sup>

It would appear that, ultimately, this decision is more of an assessment of the scope of incitement than really accepting restrictions that go beyond the boundaries of Article 20(2), *per se*. Regardless, it is clear that Article 20(2) essentially defines the scope for restrictions on hate speech. As noted above, Article 20(2) contains a number of key elements, including intention, incitement, to a limited list of results (discrimination, violence or hostility) and on the basis of clear characteristics. Many of the criminal prohibitions outlined in the legal section of this Report do not meet this standard. Several do not appear to require an intention to promote hatred. They often apply to conflicts between any groups, rather than just statements targeting specific types of groups. In many cases, the standard falls well below that of incitement to violence, discrimination or hostility, for example being triggered whenever statements stir up tension, promote conflict or even lead to intolerance (which could happen as the result of media reporting on a crime that was perpetrated by someone from one group against someone from another).

Another problem with many of the ‘hate speech’ rules in the Southern Mediterranean is that they are also blasphemy laws, the aim of which is to protect a religion rather than a group of people (i.e. those who adhere to a religion or believers). As the UN Human Rights Committee stated in General Comment No. 34 on Article 19: Freedoms of opinion and expression:

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.<sup>150</sup>

In other words, while incitement to hatred against a group on the basis of their religion should be prohibited, the prohibition of criticism of the tenets of belief of a religion is not legitimate. Many of

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<sup>148</sup> See Bossuyt, M., *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights* (Dordrecht: Martinus Nijhoff Publishers, 1987), pp. 404-405, 408.

<sup>149</sup> 8 November 1986, Communication No. 550/1993, para. 4.

<sup>150</sup> 12 September 2011, UN Doc. CCPR/C/GC/34, para. 48. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en).

the prohibitions described in the section of this Report on legal rules are blasphemy laws, and many of the cases highlighted there and elsewhere in this Report are based on the idea of blasphemy.

Beyond these problems with the specific legal enactments, wider problems with the legal system mean that it is almost impossible for even well drafted rules to be applied in a manner that respects freedom of expression in many countries in the Southern Mediterranean. Most of the countries in the region are characterised by complex racial, ethnical and/or religious relations, meaning that these issues are inevitably highly politicised. This makes it very difficult even for well-meaning officials to apply criminal restrictions on hate speech fairly and in an even-handed manner. This is exacerbated by the fact that, in a few countries, even the judiciary is not independent of government while in many more countries other administration of justice actors – such as the police and prosecutors – lack the political independence which would be required to apply these sensitive rules fairly and appropriately.

### *Recommendations*

- Countries in the Southern Mediterranean should amend their general, criminal rules on hate speech so as to conform to the standards of international law. This implies that such rules:
  - Use clear and narrow terms which are not susceptible of broad and varying interpretation.
  - Are limited to cases of intentional incitement to discrimination, violence and hostility against groups based on a limited range of recognised characteristics (i.e. protected grounds which are analogous to race, nationality and religion).
  - Are not used as a justification for overly broad rules on national security or public order, or for blasphemy laws.
- Special care should be taken to ensure that the application of hate speech rules by administration of justice actors – including the police, prosecutors and the judiciary – is done in an independent, fair and appropriate manner.



## Media Regulation

Media regulation is in many ways a broad topic that covers issues ranging from the licensing of broadcasters to complaints systems. For purposes of this Report, two main issues are of key relevance. The first is the presence, in many media laws, of direct prohibitions on various types of content, including hate speech and racist content. The second is the question of promoting professionalism in the media, including through codes of conduct and complaints systems. The first is addressed here and the second below under Promoting Professionalism.

As a first point, it should be noted that, under international law, it is very clear that any bodies which exercise regulatory powers over the media should be independent in the sense of being protected against both political and commercial interference. The reason for this is fairly obvious. If regulators are controlled by political actors or the government, their decisions are likely to align with the wishes of those actors, rather than the wider public interest. This will undermine the ability of the media to act as a fourth estate or watchdog of the powerful, and to report critically on current affairs, thereby undermining respect for freedom of expression.

Every year since 1999, the special international mandates on freedom of expression at the UN, OAS, OSCE and African Commission come together to issue a Joint Declaration on a freedom of expression theme. They made a very clear statement about the need for independent regulation of the media in their 2003 Joint Declaration:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.<sup>151</sup>

More recently, in its September 2011 General Comment on Article 19 of the ICCPR, the UN Human Rights Committee made a similar statement albeit limited to broadcast regulators, although the same rationale and principle applies to any body that regulates any type of media:

It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses. [references omitted]<sup>152</sup>

One of the problems in the Southern Mediterranean region is that in almost all countries, with the notable exception of Tunisia, regulation of the media is either undertaken directly by government or by formally autonomous bodies (in the sense of not being part of government) which are in practice still controlled by government. While it is always important for media regulators to be independent, this feature is of the greatest importance when it comes to regulation of content. It remains a significant challenge, however, to establish independent bodies in the region. Even where the law goes some way to doing this, governments find it very difficult not to refrain from using their power to exert their influence over media regulators.

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<sup>151</sup> Adopted 18 December 2003. Available at: <http://www.osce.org/fom/66176>.

<sup>152</sup> General Comment No. 34, note 150, para. 39.

Beyond this, however, there are important questions about whether it is appropriate at all to have special quasi-criminal or even administrative content rules in media-specific legislation. Subject to systems to promote professionalism, discussed below, which often involve codes of conduct or ethics or charters of honour linked to complaints systems, there are a number of reasons for questioning whether it is appropriate to impose any special criminal or administrative content requirements on the media.

First, such rules almost always run in parallel to rules of general application –whether these are found in the criminal or civil law – so that media-specific laws normally expose the media to double jeopardy, which is never appropriate. Second, although it is recognised that the ‘loudspeaker’ power of the media can exacerbate the harm of inappropriate speech, such as defamation or invasions of privacy, it is more appropriate to address this as a matter of sanctions rather than through separate systems of rules. In other words, the rules on defamation or privacy should apply to everyone – rather than there being a separate set of rules for the media – although it may be appropriate to apply harsher sanctions or remedies in cases involving the media, due to their greater power to do harm.

Practice on this remains divided, even among democracies, with some having a tradition of imposing special content restrictions on the media and others limiting the scope of this to the types of professional regulation that are discussed below. At a minimum, special restrictions should only be imposed on the media where there are clear justifications, linked to the nature and role of the media in society, for this.

#### *Recommendations*

- Only bodies which are protected, both formally and in practice, against political and commercial interference should be tasked with regulating the media.
- Consideration should be given to doing away altogether with special criminal or administrative content restrictions for the media, whether print or broadcast or both and, at a minimum, only restrictions for which there is some special justification linked directly to the role of the media in society should be retained.

#### **Promoting Professionalism: Self-regulation, Co-regulation and Statutory Regulation**

There are many different ways of promoting professionalism in the media, including through training and by advocating for better working conditions for journalists. The focus here, however, is on complaints systems for the media. Ideally, these systems should involve the development of clear standards against which complaints may be assessed, whether those take the form of a code of conduct or a Charter of Honour or something else. The very process of setting minimum standards for the media as expressed in a code of conduct is very important, as it can be a crucial way of generating consensus about what these standards should be. The code of conduct is also central to ensuring fairness in the senses both of having a clear yardstick against which media behaviour can be assessed and of giving everyone – media and potential complainants – a clear indication of what is and what is not allowed. These systems also need to have an independent body tasked with hearing and deciding on complaints, in accordance with a fair procedure.

Broadly speaking, there are three different ways of setting up complaints systems. The first, known as self-regulation, is where the media or a media sector comes together themselves to establish the

system. This can be driven by working journalists or their unions, editors or owners, with different approaches being taken in different countries. Where the goal of the system is to provide redress, however, it makes more sense for the system to apply to media outlets than to individual journalists. This is because the decision to publish or broadcast content is essentially a collective editorial decision by a media outlet, and it is that decision rather than, for example, the decision by an individual journalist to write a story that causes harm. Furthermore, in many self-regulatory systems the main form of redress is publishing or broadcasting a correction, reply or retraction, and only the media outlet can offer this. At the same time, systems that apply to individual journalists can aim to expose the problems and improve the performance of journalists so can in those ways also be useful.

In these systems, those driving the system – whether journalists, editors and/or owners – work together to develop a code of conduct or set of standards. Better practice is to consult with other stakeholders in this process, so as to ensure that the standards are appropriate and balanced and reflect the concerns of all stakeholders. The same actors can then establish a complaints body (for example by adopting relevant policy documents). Better practice here is to ensure that there is good representation from non-media personalities on the body. In the United Kingdom, for example, the majority of the members of the Complaints Committee of the Independent Press Standards Organisation (IPSO), including the Chair, do not come from the media sector.

One of the advantages of self-regulation is that it is normally highly protected against political interference which, as noted above, is a serious problem in the region. A second advantage is that it almost automatically brings with it a strong understanding of the way the media operates, including its duty to inform the public in a timely fashion about matters of public interest, the practical realities of running a media outlet and what standards are appropriate for the media. It is thus both likely to have the trust of the sector and also to operate in a manner which is sensitive to the needs of the sector.

On the other hand, in many cases self-regulatory bodies are accused of being too sensitive and close to the media, and not sufficiently protective of the interests of complainants. Another problem is that self-regulation almost by definition works on a voluntary basis, so it lacks ‘teeth’. All it can really do is rely on moral suasion to try to improve media behaviour, and ‘sanctions’ are normally limited to a requirement to print a statement acknowledging that the media has breached the rules (and sometimes media refuse even to do that). Perhaps the biggest downside is that it can be very difficult to get a self-regulatory system going in the first place. It requires the media or a media sector – such as newspapers or television stations – to work together to create and manage the system, which can be difficult given that they are by definition in competition with each other.

A variant on a sector-wide self-regulatory system is a complaints system put in place internally by a single media outlet, for example through the appointment of an internal ombudsman or people’s editor. These are very useful ways of improving professionalism and trust in the media. At the same time, almost by definition they are established only by more professional, high-quality media outlets, which are at the same time the very outlets which are least likely to be carrying hate speech or promoting racism. And they are not a replacement for sector-wide self-regulation.

A statutory system of regulation essentially has the same key elements, except that it is established by law, rather than by the profession, and the members of the body do not necessarily come primarily from the media. Ideally the code of conduct or main statement of standards will be developed in close consultation with senior media representatives, but even this is not always the case.

The advantages of a statutory system are that it will have the power to enforce its decisions – which are normally legally binding – and it is unlikely to be biased towards the media. By the very same token, however, it may not be independent and, indeed, this is very likely to be a problem in many countries in the Southern Mediterranean. Indeed, this approach very much resembles the way media regulation tends to work in the region, where there are serious problems with independence, as noted above. It may also be insensitive to the way the media operates and the ongoing operational needs of media outlets, and it may seek to impose unduly harsh or unreasonable penalties on the media.

Co-regulation represents a sort of middle path. A co-regulatory system is backed up by a statute, and thus has the force of law. At the same time, it is run largely by representatives of the media. An example of a co-regulatory system is the Indonesian Press Council, set up by the 1999 Press Law. It is composed of nine members. Three are appointed by owners from among themselves, three are appointed by journalists from among themselves, and the final three are appointed by owners and journalists together, from among representatives of the general public.

A co-regulatory system can reap the benefits of both systems, in a nutshell by being close to the media and understanding its needs and operational realities while also having the legal backing required to make it effective. The Indonesian system is generally acknowledged to be a great success, for example. However, a few conditions are needed for this to happen. First, the rules regarding appointments must be carefully designed so that they really are controlled by the media. A system whereby government controls the process but has to appoint mainly media representatives will not do because government can then always appoint journalists who are friendly to it. Second, there needs to be an appropriate system of funding, with most resources normally coming from the State but in a way that avoids political dependency. Third, the body should only have the power to impose light sanctions on media outlets which it determines have breached the code of conduct. Otherwise, there is a risk that the body will become oppressive and look and feel more like a statutory body.

Turning now to look at the specific way complaints systems approach the issue of hate speech, it is notable that they tend to establish much stricter standards in this area than are found in the legal rules, whereas this is not the case in other areas, such as privacy and defamation. As regards privacy, for example, it is normal for professional codes of conduct to recognise a public interest defence (i.e. so that invasions of privacy are allowed where this is justified by the overall public interest). This is exactly the same standard as is applied in better practice legal systems and, indeed, international human rights law requires the legal system to provide for a public interest override for privacy

The matter is very different when it comes to hate speech. As noted above, international standards here are quite strict and only allow States to prohibit by law intentional incitement to discrimination, violence or hostility based on a protected ground. In stark contrast to this, for example, the Editor's Code of Practice of IPSO in the United Kingdom states:

## 12. Discrimination

- i) The press must avoid prejudicial or pejorative reference to an individual's, race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.
- ii) Details of an individual's race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

This is a vastly more stringent standard which rules out not only incitement to hatred but also prejudicial statements and even references to an individual's race, etc., unless that is genuinely relevant to the story.

It is not just in the United Kingdom or in the print media sector or in systems of self-regulation that such higher standards are imposed. The Free-to-Air Television Code of Broadcasting Practice adopted by New Zealand's Broadcasting Standards Authority, a statutory regulator, states, in Standard 6. Discrimination and Denigration:

Broadcasters should not encourage discrimination against, or denigration of, any section of the community on account of sex, sexual orientation, race, age, disability, occupational status or as a consequence of legitimate expression of religion, culture or political belief.<sup>153</sup>

Once again, we see a much stricter standard than is found in the criminal law rules on hate speech.<sup>154</sup>

These approaches towards hate speech in complaints systems suggests that at least those responsible for running these systems see their rules as an important way of addressing racist speech in the media. Furthermore, anecdotal evidence suggests that these sorts of rules do help avoid more serious problems of racist speech in the media and that they are, as a result, an important part of the solution to this problem. But the standards set by many professional codes go even further and ensure that not only is the media not part of the problem but that it is actually part of the solution, because it combats rather than promotes racism and intolerance in society.

A difficult issue is the extent to which the professional systems of regulation discussed here should apply to the social media. It is the case in almost every country that the problem of hate or racist speech is far more pronounced in the social media sphere than in the traditional or legacy media. At the same time, there are problems with attempting to subject social media to these professional systems of regulation. In many cases, social media are global in scope – as with Facebook, Twitter and Snapchat – and it is simply not possible at a practical level to subject these globally players to local complaints systems. It is, however, also unfair to require even local social media players to conform to the standards that professional regulatory systems set, which are designed for the traditional media, i.e. mainly media which benefit from having an editor and an editorial process.

One solution to this, which has been adopted in many countries, including for example Indonesia, is not to require social or online media to conform to professional standards designed for the legacy media, but to allow them to opt in on a voluntary basis if they want to be treated as serious media

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<sup>153</sup> Available at: <https://bsa.govt.nz/standards/free-to-air-television-code>.

<sup>154</sup> For an article discussing this issue see Mendel, T., 2011, "Reflections on Media Self-Regulation: Lessons for Historians" 59-60 *Storia della Storiografia* 50-65.

outlets. This sets up an almost natural selection process by which readers and viewers can distinguish between more serious players – i.e. those who opt in – and less reliable sources – i.e. those who fail to opt in.

### *Recommendations*

- Systems to promote professionalism in the media, or complaints systems, should be put in place in all countries.
- Careful consideration should be given to what sort of system is most appropriate for any given country. Given the risks associated with statutory systems, self- or co-regulatory systems should normally be prioritised. Factors to be taken into account here include:
  - Whether the media or a media sector is able to come together to create a self-regulatory system.
  - Whether there is a sufficient level of responsibility and/or media literacy for the soft measures that can be applied by a self-regulatory system to change media behaviour.
  - Whether there is the political will to protect and thereafter respect the independence of a co- or statutory regulatory system.
  - Whether a co- or statutory regulatory system would avoid imposing unduly harsh sanctions on the media for breaches of the rules.
- These systems should include clear rules on racist or discriminatory speech in their codes of conduct or other standard-setting documents, which should normally set significantly higher standards for this than are imposed via the criminal law.
- While social or online media should not be required to participate in professional systems designed for legacy media, consideration should be given to allowing them to opt in on a voluntary basis.

### *Positive Measures*

The main focus of this Report is on legal and regulatory measures, including self-regulation, to address hate and racist speech in the media. In this final section, however, a few more positive types of measures are addressed briefly.

The experience of a number of media outlets in Western countries suggests that one effective measure in this area is ensuring diversity in the workplace. While that is important for all workplaces, it is particularly important for the media, and especially television, given that their programmes somehow reflect society. If all of the personalities shown on television are from one race or religion, this can lead to biased perceptions of races or religions that are absent from our screens. If, on the other hand, our television screens resemble the actual compositions of our societies, this can help to break down stereotypes and prejudices. At a more profound level, having people from different groups in society as part of the workforce can help ensure that stereotypes and generally held prejudices are exposed and addressed, including in media coverage, which then has a knock-on positive impact.

Independent, official human rights bodies, such as national human rights commissions, can play an important role in promoting equality, non-discrimination and inter-cultural understanding, including in the media. They can do this through education, by understanding and then addressing problems of

systemic discrimination, and by promoting law reform and other changes that are needed to ensure equality of opportunity. In many countries, these bodies also have the power to impose sanctions on those who discriminate and/or to grant remedies to those who have suffered from discrimination. Having a dedicated body with the responsibility and power to implement these measures can make an important difference.

In many countries civil society organisations can also play an important role. One aspect of that which is directly relevant to the media is where these organisations undertake a monitoring role vis-à-vis the media, for example by establishing observatories which monitor and report on hate and racist speech in the media. This can be a very important and effective way to expose this sort of speech. Civil society can also have a more indirect role by promoting employment equity and combating prejudice and discrimination in general.

### *Recommendations*

- Media outlets should adopt specific policies or approaches with a view to ensuring that their workforces reflect, in an equitable way, the actual makeup of the societies in which they operate.
- States should establish independent, official human rights bodies the responsibilities of which include addressing racism as a general problem in society.
- Support should be provided to civil society organisations which aim to monitor and report on media output, including racist content in the media.

## Conclusion

A range of regulatory tools are available to be used by both official players and media actors to address the problem of the media being used to support and promote racism and discrimination in society. These range from criminal proscriptions on hate speech, a relatively intrusive tool, at least from the perspective of freedom of expression and of the media, to voluntary self-regulatory initiatives adopted by the media.

There is no automatic or one-size-fits-all roadmap for what countries should do in this area, or what is the best way to address the problem. The main international human rights guarantees only place an obligation on States to ban one type of speech, namely incitement to violence, discrimination or hostility against a group on the basis of its race, nationality or religion, commonly known as hate speech. This exclusivity in terms of an obligation on States to prohibit it highlights the particularly harmful nature of this type of speech. But the scope of this obligation is narrow and international law does not allow States to go beyond very narrow parameters in this area. Many of the general hate speech rules in the Southern Mediterranean region go far beyond what is permitted under international law and, as a result, need to be revised.

Many countries in the region also impose special proscriptions on what may be published or broadcast via dedicated sectoral laws. In many cases, these restrictions duplicate rules of general application found in the criminal or civil laws, so that the need or justification for them may be questioned. More generally, it may be questioned whether rules which specifically target the media in this area are needed at all, over and beyond complaints systems aimed at promoting professionalism in the media.

In countries around the world, professional complaints systems have proven to be an essential tool in combating racist content in the media but also in enlisting the positive support of the media in addressing wider problems of racism and discrimination in society. Different approaches are found in different countries, ranging from statutory complaints systems to co-regulatory systems – which are established by law but where the media retains a significant degree of control – to pure self-regulatory systems – set up by the media essentially on a voluntary basis.

Countries in the Southern Mediterranean region have a poor history of independent regulation of the media, which is essential to avoid complaints systems becoming tools for political control of the media. As a result, statutory systems should normally be avoided. The question of whether a co- or self-regulatory system would be preferable in any given country needs to be decided on a case-by-case basis, looking at a range of different factors, including whether independence is possible within a co-regulatory system and whether the media are capable of establishing an effective self-regulatory system.

Racism and discrimination are social evils difficult to address or root out, but by no means exclusive to the region; rather, they are global in nature. Countries in the region can look around the world for experience and solutions to these problems. There are, ultimately, a limited number of options, and each country must think carefully about the precise range and mix of options that will be most effective given its political and economic situation, history, social makeup and media environment.











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