REVITALISING THE CAMPAIGN AGAINST SEDITION AND INSULT OFFENCES IN AFRICA

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Policy Brief

Civic Rights Cluster
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Authorship and Acknowledgement

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Cover photo: The late *Mario Masuku* faced various sedition charges in Eswatini for speaking out against the monarchy.

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Florida State University College of Law's International Human Rights Advocacy Clinic offers students hands-on experience collaborating with international non-governmental organisations engaged in human rights advocacy.

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Defining and Describing Sedition and its Progeny Insult Offences

Defining Sedition

The Black Law Dictionary defines sedition as "an insurrectionary movement tending towards treason but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state" (Kumar, 2022). Oxford Dictionary, however, defines it as "conduct or speech inciting people to rebel against the authority of a state or monarch." English common law, from which this offence originated and which has near identical language throughout the world, defined sedition as -

> ***Causing hatred or contempt, or incit[ing] disaffection against the Crown, the government, Constitution, either House of Parliament or the administration of justice; to incite subjects to unlawfully attempt to alter matters of the church or state that were established by law; to incite crime or disturbances of the peace; raise discontent or disaffection amongst the Crown's subjects; or to promote feelings of ill will and hostility between different social classes of the Crown's subjects.*** (Feikert-Ahalt, 2012)

Deconstructing the meaning of sedition has proved problematic for courts and prosecutors worldwide and has led to prosecutions and convictions that infringe on individuals' freedom of expression.

Is sedition akin to treason, or must it be a necessary step towards treason, like a seditious conspiracy to commit treason? Is it merely the heightened criminalising of defamation and libel concerning protecting public officials? It is disturbing that a law intended to oppress the population's free expression through ambiguity could entrench itself into common law worldwide and still flourish in democratic societies today.

The ambiguous language that plagues sedition offences has led to scholars and courts analysing sedition in various ways and given rise to a disparity between a "public order" application of sedition and an "affective" notion of sedition. The "affective" notion of sedition employs sedition's subjective and vague terminology with words like "disaffection" and "ill-will", which refer to feelings against the government. Alternatively, the "public order" concept takes the objective approach of sedition being a requisite step towards treason. This dual view of sedition becomes problematic in practice because executive branches are incentivised to favour the "affective" approach if they wish to quell free expression; it is a much lower threshold to meet, given that ill will and disaffection are vague terms.

On the other hand, courts around the world tend to use the "public order" concept when making decisions on sedition because it allows for an objective approach which looks past the vague terms that are hard to reason; this may be why many sedition cases get dismissed. Suppose the executive branch utilises the "affective" concept of sedition. In that case, it is easy to see how prosecutors and police can abuse sedition to stifle political discourse that does not mimic their views. Mahatma Gandhi criticised the term disaffection in sedition offences best by stating, "Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to express his disaffection fully, as long as he does not contemplate, promote, or incite violence".

While a campaign for the repeal and reformation of sedition offences worldwide has been moderately successful, seditious language and the spirit of the offence are embedded within both colonial-era laws and modern laws. Seditious language has splintered off into defamation, libel, terrorism, cybersecurity, and media laws worldwide and continues to limit free expression. For example, Ghana, which repealed its sedition offence in 2001, began using the publication of false news offences within the last two years, which copied vague language from an 1898 colonial-era media law inspired by the offence of sedition.

Seditious Language in Insult Offences

In UNESCO's analysis of insult laws in 2022, it affirmed that insult-related offences that journalists, individuals, and human rights defenders are often charged with include "defamation, insulting public officials, sedition, attempts against national security or public order, the publication of 'fake news', blasphemy and terrorism". Seditious libel and defamation offences afford public officials lower standards than citizens to bring defamation

cases; this goes directly against international norms set out in General Comment 34 of the United Nations Human Rights Committee (UN HRC), which guides the interpretation of Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) on freedom of expression. Offences like criminal defamation offer special protections to public officials and embody seditious defamation and libel laws from colonial times. This is why the campaign against sedition is so vexing. Some offences remain dormant in colonial-era laws still on the books; other laws are enacted with sedition's problematic language.

Even more disturbing is that some of these defamation and insult laws do not provide truth as a defence. This forces individuals to self-censor, leading to a chilling effect on speech; self-censorship is what the original sedition offence laws intended. Reforming or repealing these insult offences matters in the campaign against sedition because sedition's spirit lives on through insult offences, insulating public officials against the freedom of expression.

Recent History of Sedition and Insult Offences

Enforcement of the offence of sedition has ebbed and flowed in the last twenty years. While Africa has had some major landmark cases and legislative reform on insult and sedition offences, in the previous decades, some countries, which had previously made progress, have regressed. The UN and the African Commission on Human and Peoples' Rights (African Commission) have supported the campaign to repeal criminal defamation and insult offences. Regional tribunals worldwide have struck down such laws. However, criminal defamation and insult offences still linger in many countries and retain vague and subjective terminology.

Democratic countries ought to repeal insult and sedition offences because freedom of expression is needed to criticise governments and bring to light other human rights issues; this is why freedom of expression is the bedrock of human rights. A 2022 UNESCO policy document on freedom of expression highlighted the following:

> ***… increase in the use of criminal defamation offences to restrict online expression within a broader growing trend to criminalise speech on the Internet. Libel, defamation and insult provisions and their application have been strengthened, including through their integration into new legislation on cybersecurity, anti-terrorism or aimed at countering disinformation or hate speech, characterised by vague definitions that facilitate their abusive use.***

While Africa continues to make strides toward reforming sedition and insult offences, it has not been immune to global backsliding. This resurgence has happened rapidly; not even two decades ago, the campaign against sedition and insult laws had serious traction and drew attention to freedom of expression, culminating in the repeal of sedition in its founding country of England. Africa made significant steps during this time and still maintains some success in regional and domestic courts. Still, in recent years, several African countries have resorted to reemploying colonial offences and implementing new offences with similarly vague language, ignoring regional and international norms which emphasise decriminalising defamation and repealing sedition.

Critiques of the Offence of Sedition

Sedition Offences are not Misused; They are Intended to be Oppressive

First, a misconception must be cleared up; these laws are not misused but used throughout the world precisely for the purpose for which they were created: to quash criticism and political opposition against the government. These sedition offences were devised when media increased through the advent of the printing press, and the English monarchy implemented seditious libel and defamation to stop the spread of criticism. Colonial rulers worldwide implemented similar draconian laws to suppress criticism of the government, precisely as they are used today.

Sedition and insult offences are antithetical to democratic values and freedom of expression, which are enshrined in international and regional law. Before courts in England used sedition to criminalise defamation and libel, these were merely civil offences. This means it has taken over five hundred years to return these insult offences to their proper place in civil suits rather than criminal prosecution. While monarchs relied on sedition because the Crown

was the only voice in government, a democracy requires a plurality of voices expressing their ideas and opinions, even if they disagree with the current representatives of the government.

Seditious Language within Other Statutes

Although strides have been made to outright repeal the offence of sedition in some countries, other laws have utilised the same language found in sedition serving as gap fillers, just like the offence of sedition filled the gaps when it was first brought to fruition (Hamburger, 1985). In the colonial era, if times were peaceful, the political outcry was viewed as civil defamation and the punishment was a slap on the wrist; in times of strife, voiced political opposition was charged as sedition and met with severe punishment. The space these offences inhabit is supposed to be where speech is protected so that democracy may be healthy and thrive.

Even if dissenting, public discourse is a prerequisite to democracy; as Benjamin Herskovitz stated, "freedom of expression can also serve as a safety valve: citizens are less likely to resort to violent means of dissent if they can freely voice their objections to government actions". Advocacy for the space between civil defamation and treason happens at every level, from international to regional to the state. Unfortunately, dormant and colonial-era offences limiting free expression, which go unnoticed for years, can quickly be revived to violate this space of free expression.

Sedition Offences are Meant to Protect the Government Itself, Not Public Officials

Another misconception of the offence of sedition stems from its origin, where it was used to protect the individual behind the Crown from criticism. While the individual wearing the Crown is integral to a monarchy, the individuals in a democratic government are not since they serve at the pleasure of the people as representatives. This means that sedition charges must not be brought against political opposition because they criticise the individuals running the government, not the idea of democracy itself.

In recent years, as some monarchies have endeavoured to democratise, some authoritarian states have increased the use of the lèse-majesté (or lese-majesty) offences. The lese-majesty offence is the 'treasonous' crime of insulting the monarch, head of state, or ruler. Section 101 of the Norwegian Penal Code, for instance, punishes defamation against the King or the Regent with up to five years imprisonment. Though the country's Supreme Court has ruled that the right to freedom of expression is fundamental where public officials are concerned, the provision remains in the penal code. The UN OHCHR noted the increasingly harsh application of the lese-majesty offence in Thailand to impede freedom of expression and further restrict civic space.

This goes against the notion that public officials should not use defamation suits and criminal or civil courts in democratic governments to protect their reputations. Unless someone criticises the fundamental idea of democracy and inciting its violent overthrow, they cannot be said to be creating disaffection or ill-will towards the government and, therefore, not committing the offence of sedition.

Proportionality and Due Process

The offence of sedition is overly broad, resulting in a disproportionate limitation of the right to expression. For example, mere seditious speech can be criminalised without any seditious action. In some jurisdictions, individuals can be assumed to intend the result of their speech, meaning the prosecution need not prove intent, resulting in an even lower threshold for the criminalisation of speech. The truth will not necessarily hold up as a defence because the test is whether the accused "caused dissatisfaction" regardless of whether the utterances were true. However, the veracity of a statement could be used as an argument in constitutional litigation to show the unreasonableness and disproportionate response to utterances critical of the state.

Principle 21(1)(a), set out by the African Commission in 2019, mandates truth as a total defence. The burden must be on the defendant to prove the false statement, and the "actual malice" standard must be codified into law. The Inter-American Court of Human Rights and ECHR have recognised these protections for defamation, which require that politicians stand up to higher scrutiny for their reputation.

The "actual malice" standard could also be applied to all insult offences as an additional element that prosecutors must prove for their *prima facie* claim against defendants. This would provide an extra layer of protection to individuals expressing themselves and criticising public officials. The "actual malice" standard for criminal defamation was cited in the landmark *New York Times Co.* case, which both the Inter-American Court of Human Rights and ECHR have cited in criminal defamation cases.

Some sedition offences include basic safeguards, such as requiring high-level government authorities to obtain permission before a person can be charged, such as the Director of Public Prosecutions. Due process was raised as a defence in Trinidad and Tobago. The Court of Appeal rejected this argument because the Director of Public Prosecution would have to certify the case. The Privy Council heard the appeal in June 2023. One could analyse whether these restrictions might reduce the number of sedition charges and prosecutions.

Vagueness

The most notorious problem with the offence of sedition and insult laws under sedition's umbrella is their vagueness. Words such as "disaffection" and "ill-will" are feelings that are difficult for dictionaries to describe adequately, let alone a judge responsible for sentencing an individual to prison. Because these words are subjective, it is impossible to know the threshold for an individual to be disaffected or feel ill-will by someone's speech or writing. This ambiguity from a legal perspective makes for bad law, and courts at both regional and state levels have deemed these statutes void for vagueness. The rule of lenity also applies given that these laws are vague and defendants must have fair notice of whether they are committing a criminal offence. This vagueness was no accident, however, because, once again, it creates opportunities to quell free expression harshly during crises or at the discretion of an executive officer.

Vague offences and statutes make for bad jurisprudence because guidelines cannot be created effectively in the common law to address these offences. This vagueness leaves judges vexed and allows individuals within the executive branch to wield immense power to control speech as they wish. This problem is further exacerbated when judges serve at the pleasure of the president or monarchy, leading to self-censorship by judges.

> ***"It is an offence to bring into hatred or contempt or excite disaffection … it is entirely subjective for a construction to be put on them. Their degrees may also vary considerably, but that may not matter ultimately since if it is encompassed in the term in the opinion of a decision maker, it is sufficient for an offence to be cognisable. For instance, contempt implies strong feelings of disapproval combined with disgust. Whether the feelings are strong enough to constitute an offence is for the person in authority to determine. At a given time and in a particular case, those strong feelings of disapproval may go unnoticed. Yet, in another case and under different circumstances, lesser feelings of disapproval would be enough to attract the offence. In the ultimate analysis, the decision to prosecute depends on who wield the authority."***
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> *Haroon Farooq v Federation of Pakistan and Others, 2023 LHC 1450 (14 March 2023), para 60*

The Campaign against Sedition and Insult Offences over the Past Two Decades

International human rights mechanisms have significantly influenced the campaign against sedition and insult offences worldwide. These offences saw a flurry of action against them, with ten UN Special Mandate joint declarations calling for decriminalising defamation and libel and repealing similar offences such as sedition and restrictive media and blasphemy laws. In 2011, the UN Human Rights Committee officially adopted General Comment 34, guiding the interpretation of Article 19(3) of the ICCPR. General Comment 34 called for no prison sentences for insult offences and the decriminalisation of defamation.

Various courts at the state and regional levels have found these insult offences unconstitutionally vague. President Nana Akufo-Addo of Ghana opined on the repeal of sedition, stating it "contributed significantly to the deepening of democracy in our country, enhancing public accountability as a strategic goal of public policy." The African

Commission published its Declaration of Principles on Freedom of Expression and Access to Information in 2019, calling for the outright repeal of sedition and criminal defamation offences.

It would not take much to reinvigorate this campaign, given the technological improvements in recent years and the ability for movements to pick up steam through social media and public awareness. A concerted campaign against sedition and insult offences is needed because a piecemeal approach to repealing sedition is not enough, as its language can easily be put into other laws.

Landmark Domestic Court Cases

While many progressive decisions have come from regional courts directing states to repeal or amend the sedition provisions in favour of freedom of expression, some domestic courts have taken the lead in addressing this issue. In 2010, the Constitutional Court of Uganda declared null and void the sedition provisions in the Penal Code because they were in contravention of the enjoyment of the right to freedom of expression. The court noted that the offence was vague and rooted in a colonial past of fear of criticism. Similarly, in Eswatini in 2016, the High Court struck down provisions of the Sedition and Subversive Activities Act, highlighting its inconsistency with the Constitution. The Supreme Court heard the state's appeal in June 2023.

> ***"But that does not solve the fundamental criticism that the wording creating the offence of sedition is so vague that one may not know the boundary to stop at while exercising one's right under 29(I)(a) ... It is so wide, and it catches everybody to the extent that it incriminates a person in the enjoyment of one's right of expression of thought. Our people express their thoughts differently depending on the environment of their birth, upbringing and education… All these different categories of people in our society enjoy equal rights under the Constitution and the law. And they have equal political power of one vote each…"***
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> *Mwenda and Another v Attorney General (2010) AHRLR 224 (UgCC 2010) (August 25, 2010)*

The Malaysian Federal Court of Appeal declared a section of the Sedition Act unconstitutional because it criminalised the publication of seditious material without requiring the person charged to possess the requisite criminal intent. The Court reasoned that virtually every crime required proof of criminal intent. Without it, the law created a strict liability crime, disproportionately restricting freedom of expression enshrined in Malaysia's Federal Constitution.

In May 2022, the Indian Supreme Court ordered the central government to reconsider the sedition law. The apex court directed that, in the meantime, the government not to register any new sedition cases or carry out investigations or arrests. Given the rampant misuse of the sedition provision to crack down on free speech, the order was celebrated as a victory for civil liberties.

In March 2023, a Pakistan High Court struck down the offence of sedition for being inconsistent with the Constitution in a verdict hailed by free speech advocates and journalists.

> ***"The power being wielded by the holders of public office at any time has been committed or entrusted to them to be used in the interest of the people. It is thus inconceivable for a fiduciary to gag and muzzle the delegator by making use of a provision which is archaic and is antithetical to the instincts and traditions of a people under a constitutional democracy. A law which was the product of a colonial mindset must be subjected to a searching scrutiny and analysed punctiliously by placing it against the Constitution and to ask if it is disloyal to the language chosen by the framers of the Constitution."***
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> *Haroon Farooq v Federation of Pakistan and Others, 2023 LHC 1450 (14 March 2023)*

Landmark Regional Court Cases

In 2018, the Economic Community of West African States (ECOWAS) Court of Justice decided that Gambia's common law phrasing of sedition is so broad that it allows for subjective interpretation.

> ***"Narrowly drawing offences has been treated as particularly important in the case of free speech because of what is known as "chilling effect" which occurs when a wide or vague speech-restricting provision forces self-censorship on speakers even with, because they do not wish to risk being caught on the wrong side of it."***
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> *Federation of African Journalists and Others v Gambia [2018] ECOWASSCJ 4 (13 February 2018)*

The EACJ made a similar decision on Tanzania's sedition offence, finding that it "fail[ed] the test of clarity and certainty required". The EACJ criticised Tanzania's Media Services Act offences of sedition and criminal defamation for violating international legal standards.

> ***"The definitions of sedition in the said section are hinged on the possible and potential subjective reactions of audiences to whom the publication is made. This makes it all but impossible, for a journalist or other individual, to predict and thus, plan their actions."***
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> *Media Council of Tanzania and Others v Tanzania, Reference No. 2 of 2017 [2019] EACJ 2 (28 March 2019)*

Legislative Reforms

Some African countries, such as Ghana, Kenya, Malawi and Zambia, have repealed sedition. In May 2023, Uganda amended its penal code to repeal the sedition offence following the 2010 Constitutional Court judgement.

In 2020, the legislature of Sierra Leone repealed the criminal libel law by enacting the Independent Media Commission Act (2022). Though the draconian law left behind a grim legacy for many journalists who suffered its consequences, the IMC Act reassures media freedoms in the country.

NGOs have an essential role to play in monitoring proposed laws to ensure that sedition's vague language is not reintroduced while also combing through penal codes for offences which could be used to quash free expression.

In Singapore, the Sedition Act empowered the Courts to suspend the publication of newspapers containing seditious content and prohibit the circulation of seditious publications. In 2021, the Singapore Parliament passed the Sedition (Repeal) Act to repeal the Sedition Act. The Ministry of Home Affairs, explaining the repeal act, said, "While the Sedition Act was used in the past to address various forms of conduct that could weaken Singapore's social fabric and undermine its institutions, new laws were introduced over the years to deal with these concerns in a more targeted and calibrated manner".

Regional and International Standard Setting

In 2000, ARTICLE 19 issued a brief on international standards for defamation. UNESCO in 2022 referred to this document as influential to the campaign against insult offences. The document aimed to strike a balance between the freedom of expression and the right to an individual's reputation, both guaranteed in the ICCPR. It set out several principles addressing criminal defamation and public officials' limited protections against defamation. The principles laid out by ARTICLE 19 have been endorsed by the three official mandates on freedom of expression: the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression.

These principles call for an independent tribunal through a constitutional or human rights court to hear cases affected by Article 19 of the ICCPR. Principles 2, 3, 4, and 8 are pivotal in campaigning against sedition and insult laws. Principle 2 provides as follows:

> ***Principle 2: Legitimate Purpose of Defamation Laws***
> ***(a) Defamation laws cannot be justified unless their genuine purpose and demonstrable effect is to protect the reputations of individuals – or of entities with the right to sue and be sued –***

against injury, including by tending to lower the esteem in which they are held within the community, by exposing them to public ridicule or hatred, or by causing them to be shunned or avoided.
(b) Defamation laws cannot be justified if their purpose or effect is to protect individuals against harm to a reputation which they do not have or do not merit or to protect the 'reputations' of entities other than those which have the right to sue and to be sued. In particular, defamation laws cannot be justified if their purpose or effect is to:
i. prevent legitimate criticism of officials or the exposure of official wrongdoing or corruption;
ii. protect the 'reputation' of objects, such as state or religious symbols, flags or national insignia;
iii. protect the 'reputation' of the state or nation, as such
(c) Defamation laws also cannot be justified on the basis that they serve to protect interests other than reputation, where those interests, even if they may justify certain restrictions on freedom of expression, are better served by laws specifically designed for that purpose. In particular, defamation laws cannot be justified on the grounds that they help maintain public order, national security, or friendly relations with foreign States or governments.

The following three principles call for amendments and repeals to statutes that support sedition and insult offences:

Principle 3: Defamation of Public Bodies
Public bodies of all kinds – including all bodies which form part of the legislative, executive or judicial branches of government or which otherwise perform public functions – should be prohibited altogether from bringing defamation actions.
Principle 4: Criminal Defamation
(a) All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States which still have criminal defamation laws in place to progressively implement this Principle.
(b) As a practical matter, in recognition of the fact that in many States criminal defamation laws are the primary means of addressing unwarranted attacks on reputation, immediate steps should be taken to ensure that any criminal defamation laws still in force conform fully to the following conditions:
i. no-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;
ii. the offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;
iii. public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official; prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practise journalism or any other profession, excessive fines and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.
. . . .
Principle 8: Public Officials
Under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status. This Principle embraces the manner in which complaints are lodged and processed, the standards which are applied in determining whether a defendant is liable, and the penalties which may be imposed.

Principle 8 supports the repeal of sedition because, like defamation, it can be used by public officials to stifle freedom of expression. International law has established that public officials should tolerate more, not less, criticism.

In 2011, the UN HRC published General Comment 34 to clarify Article 19 of the ICCPR. It lays out the 3-part test that must be used when limiting freedom of expression in Article 19(3):

> ***[T]he restrictions must be "provided by law"; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality. . .. [re]strictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.***

Regarding the first part of the test, which states that a law must be precise when restricting expression, the UN HRC explained in the General Comment that the law -

> ***… must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly, and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.***

Proportionality, as General Comment 34 explains, "has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law." This final part of the test requires that if there is a lesser punishment or alternative remedy, that should be pursued instead of criminalisation. Sedition and insult offences run afoul of all three parts of the test in Article 19(3).

In 2019, the African Commission on Human and Peoples' Rights adopted a declaration of freedom of expression and access to information (Principles on Free Expression). This replaced the declaration of 2002. Principle 21 lays out internationally recognised norms on freedom of expression:

> ***Principle 21. Protecting reputations***
> ***1. States shall ensure that laws relating to defamation conform to the following standards:***
> ***a. No one shall be found liable for true statements, expressions of opinions or statements which are reasonable to make in the circumstances.***
> ***b. Public figures shall be required to tolerate a greater degree of criticism.***
> ***c. Sanctions shall never be so severe as to inhibit the right to freedom of expression.***

Section 1(a) of Principle 21 is significant because it calls for the truth to be a total defence. Section 1(b) is significant because it calls into question all insult offences, such as sedition, seditious defamation, and seditious libel, which public officials wield to quell free speech. Section 1(c) calls for the least severe sanctions; defamation would be a civil remedy. Principle 21 follows the norms set out by all international mechanisms, such as the Inter-American Court and the European Court of Human Rights (ECHR).

In 2020, a joint statement by special rapporteurs to the United Nations addressed a sedition statute in Hong Kong. The statement criticised the vague, seditious language used in the Statute:

> ***We express our grave concern with the broad definition of what constitutes seditious speech, concerned that the broad definition may restrict legitimate expression. The Human Rights Committee . . . expressed similar concerns about the Sedition offence's definition. In each case, the Committee recommended the . . . [l]aw must be in line with the Covenant.***

The rapporteurs referred to the standards applied to restrictions on Article 19 of the ICCPR. Through Resolutions 39/6 (2018) and 45/18 (2020), the UNHRC expressed concern about the misuse of defamation and libel laws to stifle legitimate expression and interfere with journalism through excessive criminal penalties. The resolutions urged States to revise and repeal the problematic laws.

Recommendations

Advocacy and lobbying are needed at every level of government to turn the tide against the criminalisation of expression, including the offence of sedition. These would include:

- Creating effective legislation to rid statutes of subjective and ambiguous terms that allow for prosecutorial abuse;
- Ensuring that the executive branch is enforcing the statutes as intended and following constitutional and international guarantees afforded to citizens, as well as allowing for more independence within the judicial system to act impartially; and
- Allowing media agencies to act independently to ensure a free press that will strengthen democratic governance.
- Ensuring judges independence in decision-making on all matters.
- Reviewing penal codes and removing colonial-era laws that function as insult law gap fillers that executive branches may utilise to impede free expression. This must also include media, terrorism, and new cybersecurity laws that mirror sedition and insult offence language.

These offences can and have been used on former political figures; therefore, there is an incentive to repeal these offences so there cannot be political retribution after members leave office. This should create an incentive for a broad coalition at the legislative level to avert the use of these offences. Free political expression allows for a healthy form of dissent and reduces the risk of political violence in countries. Without political opposition, constructive dissent and contestation of ideas, progress does not happen.

Documenting who is enforcing these offences, whether local police or security forces and the regions in the state where they are being enforced is necessary. By gathering this information and creating a paper trail, special rapporteurs and accountability mechanisms can glean insights into the abuse of specific offences.

Accountability of low-level executive officials like police and local government officials for enforcing sedition and insult offences is as vital as accountability at the highest levels of the executive branch.

Attention must be brought to the consolidation of power by the executive branch in democracies. These laws are being wielded like swords and shields by authoritarian leaders. Africa has been a leading proponent for reform to eradicate sedition and insult offences and must continue the push for free expression, including entrenching separation of powers and judicial independence.