**Law/Cases Cited in Application:**

**International Conventions and Treaties Cited:**

Law: 2002 Declaration of Principles of Freedom of Expression in Africa

Notes: Art. I - 1 Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

Law: Article 9 of the African Charter on Human and Peoples’ Rights

Notes: 1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

Law: Article 19 of the International Covenant on Civil and Political Rights

Notes: Art. 19 - 1. Everyone shall have the right to hold opinions without interference. 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. 3. 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.

Law: The ECOWAS Treaty provides specifically for protection of journalists in Article 66:

Notes: Art. 66 - 1. In order to involve more closely the citizens of the Community in the regional integration process, Member States agree to co-operate in the area of information. 2. To this end they undertake as follows: [...] c) to ensure respect for the rights of journalists; [...]

Law: Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security, 21 December 2001, Dakar.

Notes: Art. 1(k) - The freedom of the press shall be guaranteed.

Law: American Convention on Human Rights, 18 July 1978, 1144 UNTS 143, 148-49.

Notes: Art. 13 – 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals. 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

Law: Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950

Notes: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Law: League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), Article 32.

Notes: The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.

Law: Declaration on Human Rights of the Association of South East Asian Nations (available at http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights- declaration).

Notes: Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person’s choice.

Law: Joint Declaration by 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, adopted 10 December 2002

Notes: Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.

Law: Inter-American Commission of Human Rights, Chapter V: Report on the Compatibility of Desacato Laws with the American Convention on Human Rights, 17 February 1995

Notes: [T]he State's use of its coercive powers to restrict speech lends itself to abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions. Laws that criminalize speech which does not incite lawless violence are incompatible with freedom of expression and thought guaranteed in Article 13 [protecting the right to freedom of expression], and with the fundamental purpose of the American Convention of allowing and protecting the pluralistic, democratic way of life.

Law: UNESCO, Declaration of Sana’a, 11 January 1996, adopted by the General Conference at its twenty-ninth session, November 1997.

Notes: Disputes involving the media and/or the media professionals in the exercise of their profession are a matter for the courts to decide, and such cases should be tried under civil and not criminal codes and procedures.

Law: ACHRP, Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa (2002), ACHPR Res. 62(XXXII)02, Principle XII

Notes: XII Protecting Reputations 1. States should ensure that their laws relating to defamation conform to the following standards: [...]  public figures shall be required to tolerate a greater degree of criticism...

**International Cases Cited:**

Case: ECHR, Raichinov v. Bulgaria, App. No. 47579/99 (2006.)

Notes: Disproportionate criminal sanctions for defamation violations.

Case: ACHPR, Article 19 v. Eritrea, Comm. No. 275/03 (2007)

Notes: Imprisonment of a journalist for defamation is damaging to the society as a whole.

Case: ECHR, Castels v. Spain, App. No. 11798/85 (1992)

Notes: Expressing a preference to civil remedies over criminal remedies.

Case: IACHR, Tristan Donoso v. Panama, Series C No. 193 (2009)

Notes: “[P]ondering the extreme seriousness of the conduct of the individual who expressed the opinion, his actual malice, the characteristics of the unfair damage caused, and other information which shows the absolute necessity to resort to criminal proceedings as an exception.”

Case: IACHR, Kimel v. Argentina, Series C No. 177 (2008)

Notes: Defamation of a judge balanced against the right to freedom of expression.

Case: IACHR, Herrera-Ulloa v. Costa Rica, Series C No. 107 (2004)

Notes: The burden of proof is an important consideration in defamation cases.

Case: ECHR, Cumpănă and Mazăre v. Romania, App. No. 33348/96 (2004)

Notes: Exceptional circumstances for criminal defamation laws may include hate speech or speech inciting violence.

Case: ECHR, Lingens v. Austria, App. No. 9815/82 (1986)

Notes: “... the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.”

Case: ECHR, Dichand and others v. Austria, App. No. 29271/9525 (2002)

Notes: “[The right to freedom of expression extends] not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.”

Case: ECHR, Mahmudov and Agazade v. Azerbaijan, App. No. 35877/04 (2008)

Notes: Noting criminal sanctions for defamation were very severe.

Case: ECHR, Raichinov v. Bulgaria, App. No. 47579/99(2006)

Notes: Civil remedies are preferred over criminal remedies for defamation actions.

Case: ECHR, Kubaszewski v. Poland, App. No. 571/04 (2010)

Notes: civil law is an appropriate remedy for defamation.

Case: ECHR, Lyashko v. Ukraine, App. No. 21040/02 (2006)

Notes: “[T]he dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.”

Case: ECHR, Bodrožić and Vujin v. Serbia, App. No. 38435/05 (2009)

Notes: “[R]ecourse to criminal prosecution against journalists for purported insults raising issues of public debate, such as those in the present case, should be considered proportionate only in very exceptional circumstances involving a most serious attack on an individual’s rights.”

Case: ECHR, Gavrilovici v. Moldova, App. No. 25464/05 (2009)

Notes: Criminal defamation laws should only be used as a matter of last resort.

Case: ACHPR, Liesbeth Zegveld and Mussie Ephrem v. Eritrea, Comm. No. 250/2002 (2003).

Notes: “The right to freedom of expression has been recognised by the African Commission as a fundamental individual human right that is also a cornerstone of democracy and a means of ensuring the respect for all human rights and freedoms. It is a well settled principle of the African Commission that any law restricting freedom of expression must conform to international human rights standards relating to freedom of expression and should not jeopardise the right itself. [emphasis added].”

Case: ACHPR, Kenneth Good v. Republic of Botswana, Comm. No. 313/05 (2010)

Notes: “Freedom of expression “...constitutes one of the essential foundations of such a [democratic] society, one of the basic working conditions for its progress and for the development of every man. [...] It is applicable not only to ‘ information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society.”

Case: UNHRC, Zeljko Bodrožić v. Serbia and Montenegro, Comm. No. 1180/2003 (2006)

Notes: Discussing standard of defamation for a public figure.

Case: ECHR, Tolstoy Miloslavsky v. the United Kingdom, App. No. 18139/91 (1995)

Notes: “excessive damages in defamation cases violate the “necessary” requirement for justifying a restriction on expression.”

Case: ECHR, Steel and Morris v. the United Kingdom, App. No. 68416/01 (2005)

Notes: “[i]n the imposition of damages, regard must be had to the likely impact on the defendant.”

Case: ECHR, Koprivica v. Montenegro, App. No. 41158/09 (2011)

Notes: Court ruled damages awarded were unduly excessive which amounted to a restraint on freedom of expression.

Case: ECHR, Filipovic v. Serbia, App. No. 27935/05 (2007)

Notes: “[a] damage award that equaled 6 months’ of the defendant’s salary violated his right to freedom of expression, stating that the order had not been necessary in a democratic society.”

Case: ACHPR, Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe, Comm. No. 284/03 (2009)

Notes: “In an open and democratic society individuals must be allowed to express their views freely and especially with regards to public figures, such views must not be taken as insulting. The freedom to speak one’s mind is now an inherent quality of a democratic and open society. It is the right of every member of civil society to be interested in and concerned about public affairs – including the activities of the courts.”

Case: UNHRC, Marques v. Angola, Comm. No. 1128/2002 (2005)

Notes: “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. [emphasis added].”

Case: ACHPR, Law Offices of Ghazi Suleiman v. Sudan, Comm. No. 228/99 (2003)

Notes: “[F]reedom of expression is a cornerstone upon which the very existence of a society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.”

Case: ACHPR, Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria, Comm. No. 140/94-141/94-145/95 (1999)

Notes: “This article reflects the fact that freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the conduct of public affairs in his country.”

Case: ACHPR, Amnesty International v. Zambia, Comm. No. 212/98 (1999)

Notes: “[F]reedom of expression is a fundamental human right, essential to an individual’s personal development, political consciousness and participation in the public affairs of a country.”

**Laws of Burkina Faso Cited:**

Law: Burkina Faso Constitution: Art. 8

Notes: “Freedom of expression, freedom of press and the right to information are guaranteed. Every person has the right to express and disseminate his/her opinion within the framework of the laws and regulations in force.”

Law: Information Law of 1993 of Burkina Faso (Code de l’information, Loi No. 56/93/ADP of 30 December 1993, see Annex VII)

Notes:

Art.2.- Information is transmitted through general or specific publication, by posters, by audio-visual means and by any other medium of mass communication.

Art.18.- No general or specific publication shall contain any image, story, information or inclusion which infringes upon the privacy of citizens, or is contrary to public morals, morality and civic ethics, or promote racism or tribalism.

Art.89.- The publication or dissemination, by the means listed in Article 2 above, of any information, photograph or film which is contrary to decency and morality, and any violation of Article 18 above, are punishable by penalties under the Criminal Code.

Art.109.- Any allegation or imputation of a fact which undermines the honour or consideration of the person or entity towards which the fact is directed constitutes defamation. The direct publication or reproduction of this allegation or imputation is punishable, even if it is made in tentative form or if the personor entity is not explicitly named, but the identification of that person or entity is made possible by the terminology used in speech, exclamation, threats, writing or publication. Any offensive expression, term of contempt or taunting language that does not contain an allegation of fact, constitutes an insult.

Art.111.- Defamation committed with the same means shall be punishable with the same sentence, due to their purpose or nature if directed towards one or more members of Parliament or government; one or more members of the Superior Council of the Judiciary; a civil servant with a temporary or permanent public mandate; a judge; a juror or a witness pursuant to his or her testimony.

Art.113.- An insult committed with the same means towards the entities or persons cited in articles 104 and 105 above shall be punishable with a sentence of imprisonment between six days and three months and a fine between 5.000 and 300.000 FCFA or with only one of these sentences.

An insult committed in the same way towards private persons, if not preceded by provocation, shall be punishable with a sentence of imprisonment between five days and two months and a fine between 5.000 and 300.000 FCFA or with only one of these sentences. The maximum period of imprisonment shall be six days and the maximum amount of the fine 500.000 FCFA, if the insult is committed against persons that can be defined as a group by their origin, race, ethnicity, region of origin, religion or political party, and if the goal is to incite hatred between citizens and inhabitants.

Art.137.- In case of a conviction under articles 110, 111, 112 and/or 113, the suspension of the newspaper, periodical journal, radio or television broadcasting may be pronounced within the same judicial decision for a period that does not exceed six months. This suspension shall have no effect on employment contracts which bind the convicted, as he or she remains bound by any contractual or legal obligations resulting from employment.

Law: Article 6, 178, 181 and possibly 361 of the Burkina Faso Criminal Code (Code Pénal, Loi No. 043/96/ADP of 13 November 1996,4 see Annex VIII)

Notes:

Art. 6.- In case of a conviction for several felonies or misdemeanours, only the most severe penalty will be imposed. [...]

Art. 178. - When one or more magistrates, jurors or judges, in the course of exercising their duties or otherwise related to their work, are subject to any contempt by means of words, texts or drawings which were not made public, which tend, in those cases, to damage their honour or sensitivity, the person responsible will be punished by a sentence of imprisonment of six months to a year and by a fine between 150.000 and 1.500.000 francs.

[...]

Art. 181. - In any case, the offender may be further sentenced to making reparations, either during the first hearing or by written order. The prison term shall only begin on the day that reparation is made. In case contempt has been committed publicly, the maximum sentence shall be applied.

Art. 361 - Any allegation or imputation of a fact that impugnes the honour or reputation of the person or entity against which the allegation or attribution is made constitutes defamation.